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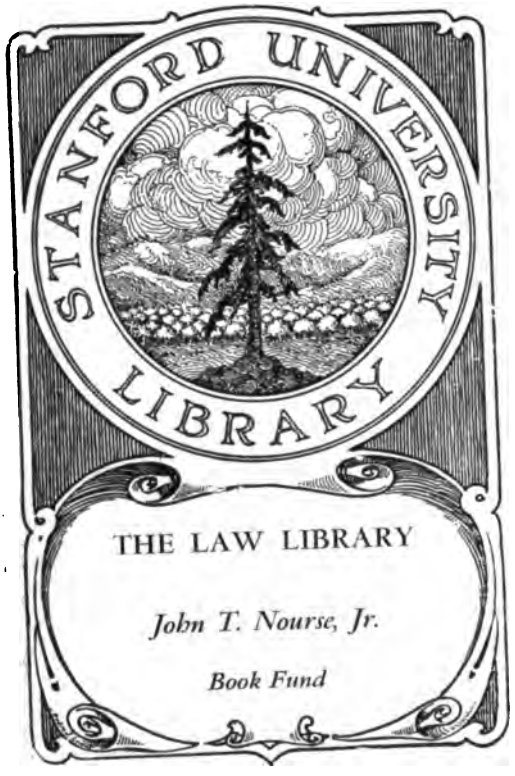
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CHARGES

OF THE

BAR ASSOCIATION OF NEW YORK

AGAINST

HON. GEORGE G. BARNARD

AND

HON. ALBERT CARDOZO.

Justices of the Supreme Court,

AND

HON. JOHN H. McCUNN,

A Justice of the Superior Court of the City of New York,

AND

Testimony thereunder taken before the Judiciary Committee of the Assembly of the State of New York, 1872.

Hon. L. BRADFORD PRINCE,
Chairman of the Committee.

JOSHUA M. VAN COTT,
JOHN E. PARSONS,
ALBERT STICKNEY,
Committee of the Bar Association.

GEO. TICKNOR CURTIS,
RUFUS F. ANDREWS,
Counsel for Judge Barnard.

WILLIAM FULLERTON,
EDWARD H. OWENS,
Counsel for Judge Cardozo.

New York:
JOHN POLHEMUS, PRINTER, 102 NASSAU STREET.
1872.

CHARGES.

The following charges were hastily prepared on notice by telegraph from the JUDICIARY COMMITTEE *that they desired the complaints, upon which evidence was to be offered, to be put in writing. They contain but a partial statement of the cases upon which testimony was taken:*

To the Honorable the Judiciary Committee of the House of Assembly of the State of New York.

A memorial of the Bar Association of the city of New York to the said House of Assembly, asking for a legislative investigation in respect of alleged abuses in the administration of justice in the city of New York, having been referred to you, and the Bar Association having been notified that you would sit in the city of New York, and take testimony in respect of said alleged abuses, the undersigned were appointed by the Bar Association a Committee to adduce such evidence. Having since been apprised of a resolution of your Committee, asking for a specification of charges in respect of such alleged abuses against the Hon. Albert Cardozo and the Hon. George G. Barnard, Justices of the Supreme Court, we respectfully submit the following

Specification of Charges,

and ask leave hereafter to submit such other specifications as may be prepared while your Committee shall sit in this city.

New York, February 19, 1872.

JOSHUA M. VAN COTT,
JNO. E. PARSONS,
ALBERT STICKNEY.

I.—CHARGES AGAINST THE HON. ALBERT CARDOZO, A JUSTICE OF THE SUPREME COURT.

Preliminary Statement: As preliminary to the more formal charges, we desire to state the circumstances in which the suits relating to the gold transactions, referred to in such charges, originated.

Jay Gould and James Fisk, Jr., together with other persons, their brokers and agents, in the Autumn of 1869, conspired to make unlaw-

ful gains by a combined effort to raise the price of gold. The operations of the conspirators carried gold up from about 133 to its culmination at 163, on the 24th of September, 1869, the memorable Black Friday, on which day sales were made at the Gold Exchange Board to and on account of Gould and Fisk, through their brokers, to the amount of several hundred millions of dollars, when the market suddenly broke, and the price fell in fifteen minutes from 163 to 133. The said sales and purchases were between members of the New York Gold Exchange, an incorporated joint stock company, and the adjustment and settlement of the transactions were by the known usage of the parties, and the said business subject to the by-laws and rules of the said Gold Exchange. By the great fall in the price of gold the said Gould and Fisk, and their brokers and agents, had become liable to pay many millions of dollars to the other parties to the said transactions, which were subject to be adjusted and settled according to the said usages of the business, in conformity with the said by-laws and rules of the said Gold Exchange.

To escape from the disastrous issue of their said conspiracy to raise the price of gold, the said Jay Gould and James Fisk, Jr., and their brokers and agents, entered into a further conspiracy to prevent the clearance of the said transactions according to the due and ordinary course of such business, at the Gold Exchange Bank, and to prevent the enforcement against them of the by-laws and rules of the said Gold Exchange, to adjust the rights of the parties to said gold transactions, and to enforce the payment by the said Gould and Fisk, and their brokers and agents, of the moneys owing by them on the said sales and purchases of gold. The scheme devised to effect such unlawful purpose was, first, to obtain an order or orders from the Supreme Court, enjoining the said Gold Exchange Bank from the exercise of its corporate functions as a bank, and a clearing-house for the transactions of the Gold Exchange, and putting the assets of the said Bank in the hands of a Receiver, on the pretence, known to be false, that the Bank was insolvent; second, having thus prevented the clearing of the said transactions at the Gold Exchange Bank, to obtain another order or other orders from the Supreme Court, enjoining the said Gold Exchange from proceeding according to its by-laws and rules to adjust the rights of the parties to the said gold transactions, and to enforce the performance of their obligations by the said parties thereto. Both of said orders or classes of said orders were obtained by the conspiring parties from Mr. Justice Cardozo, and the action of the Gold Exchange Bank, and of the Gold Exchange in respect of the said transactions was thus arrested.

Out of the success of the primary device and scheme a secondary device and scheme were developed and accomplished. The said Gold Exchange Bank having been put into the hands of a Receiver, on the alleged ground of insolvency, its assets became subject, under the provisions of the statutes relating to insolvent moneyed corporations, to equal distribution among its creditors. But, in disregard and violation of the said statutes, the said conspiring parties obtained other or-

ders in the Supreme Court from the said Justice requiring the Receiver of the said Bank to pay over a hundred thousand dollars out of its assets to the said parties, and about thirty thousand dollars in Receiver's fees and law fees within the first twelve days after the assets of the said Bank were so seized; and within twenty-five days thereafter, in disregard of the equal rights of the creditors of the said Bank under the said statutes, several millions of its assets were in like manner paid to favored parties by the said Receiver under the illegal orders made by the said Justice.

So that in the course of about thirty days, it cost the said Bank about sixty thousand dollars for commissions paid to Receivers, and fees paid to lawyers, under the said orders made by the said Justice; and a further loss to said Bank in its credit and business of some three hundred thousand dollars, from the interruption and derangement of its business and affairs, caused by the said orders. And the effect of the said orders was also to arrest the enforcement against the said conspiring parties of the claims of the other parties to the said gold transactions to the amount of many millions of dollars, to their very great pecuniary injury and loss.

First Charge.—That Albert Cardozo, a Justice of the Supreme Court of the State of New York, was guilty of mal and corrupt conduct in his said office, in making orders in causes pending in the said Court in the First Judicial Department.

First Specification.—That on or about the 29th day or September, 1869, the said Justice made an *ex parte* order in the nature of an injunction order, in an action then pending in said Court, in which one Charles J. Osborne was plaintiff, and the New York Gold Exchange Bank (a New York corporation) was defendant, and Field & Shearman were the plaintiff's attorneys; that in and by the said order, the said Bank, its officers, directors, agents, attorneys and servants were enjoined to refrain from exercising any of its corporate rights, privileges, or franchises, and from collecting or receiving any debts or demands, and from paying out or in any way transferring or delivering to any person or persons any of the moneys, property or effects in the possession of the defendants, and from receiving from its dealers any balances due from them, and from claiming any of the accounts of its dealers, and from paying to any person or persons whomsoever any balances which may appear by its books, or by said accounts of its dealers to be due to them until the further order of the Court. That in and by the said *ex parte* order, one Augustus L. Brown was appointed Receiver of the said Bank, with the usual powers conferred upon Receivers of insolvent corporations. That the said order was made by the said Justice contrary to law, without due and legal proof of the facts upon which the jurisdiction of the said Court and Justice to make the same depended, and with the partial illegal and corrupt intent to unlawfully benefit, Jay Gould and James Fisk, Jr., at whose instance, and for whose benefit the said action was prosecuted, and to hinder, delay and injure the other dealers of the said Bank as a Clear-

ing House in the pursuit of their lawful rights, to the great wrong, injury and loss of the said Bank, and of its dealers, creditors and stockholders.

Second Specification.—That on or about the 4th and 5th days of October, 1869, the said Justice made two certain other orders for the appointment of the said Brown, Receiver of the said Gold Exchange Bank, in two certain other actions pending in the said Court, in one of which William M. Lloyd and Charles H. Hamilton were plaintiffs, in the other of which Benjamin F. Carver and Watts Carver were plaintiffs, in both of which the said Bank was defendant, and Field & Shearman were plaintiff's attorneys, which said orders were made without due legal proof of the facts on which the jurisdiction of the said Court and Justice to make the said orders depended, and with the partial, unlawful and corrupt intent to unlawfully benefit Jay Gould and James Fisk, Jr., at whose instance and for whose benefit the said actions were presented, and to hinder and delay the other dealers with the said Bank as a clearing house, to the great wrong, injury and loss of the said Bank, its dealers, creditors and stockholders.

Third Specification.—That on or about the 9th day of October, 1869, the said Justice made an order entitled in the said three actions pending in said Court, directing the said Brown, Receiver as aforesaid, to retain for the purpose of paying out, or to pay out, of the assets of the said Bank in his hands amounting to $400,000 and upwards, various sums of money, to wit:

To the plaintiffs' attorneys in the said actions, five thousand dollars.

To the said Brown, Receiver, for his fees, and compensation as such Receiver, fifteen thousand dollars.

To A. J. Vanderpoel, the law partner and counsel of the said Receiver, five thousand dollars.

To the attorneys and counsel of the defendant, five thousand dollars.

To certain persons described in the said order as creditors, as follows, to wit:

To Edward K. Willard & Co., who were brokers of said Gould and Fisk in the said gold transactions, seventy-five thousand dollars.

To William Heath & Co., who were also brokers of Gould and Fisk in the said gold transactions, such balance as may be due to them in coin and currency from payments actually made to the said Bank on their account, and from deposits, and also the balance coming to the said Heath & Co., from C. C. Parkes, according to the statement furnished by Heath & Co. to the said Bank; which said sums so to be paid to Heath & Co. were not further specified in said order, but which were in part, afterwards adjusted and paid to said Heath & Co. by the said Brown, Receiver, as follows, to wit: Two hundred and ten thousand dollars in gold coin and thirty-three thousand three hundred dollars in currency.

And which said order further directed that there should be paid by

the said Receiver, or any future Receiver in the said actions, to the said Heath & Co., "such further sums as may fall due to them, in coin " and currency, from moneys thereafter paid to such Receiver, or to " said Bank, for account of said Heath & Co., such sums to be paid " over as soon as received," and that afterwards large sums of money were paid to the said Heath & Co. by the Receiver of said Bank afterwards appointed by the said Justice in the place of the said Brown, which said order and payments under the said order were partial, illegal, and in violation of the express provisions of the statutes under which the said Justice pretended to have made the said several orders, and in violation of the rights of the said Bank, and of the other creditors of said bank; and the said act and order of the said Justice was partial, corrupt, and intended to illegally benefit the said parties in whose interest and for whose benefit the said actions were prosecuted, and to hinder the other creditors of the said Bank, and to wrong and oppress the said Bank, its dealers, creditors, and stockholders.

Fourth Specification.—That on or about the said 9th day of October, 1869, the said Justice made another order entitled in the said three actions, appointing one Conrad N. Jordan Receiver of the said Bank in place of the said Brown, and authorizing him, among other things, to pay all claims against the said Bank, without defining what claims were valid, or the order in which they should be paid, or that they should be paid equally and without preference, as required by law, which said order was illegally and corruptly made; and under and in pursuance of which the said Referee, by way of preference and illegally, from time to time paid out of the assets of said Bank several millions of dollars to persons claiming to be the creditors of the said Bank.

Fifth Specification.—That on or about the 20th day of October, 1869, the said Justice illegally and corruptly made another order entitled in said three actions, in and by which the said Jordan, Receiver, was authorized to pay, and in pursuance whereof he did pay, divers large sums of money, by way of preference, to other creditors of the said Bank, whose claims had theretofore been or were thereafter to be adjusted, allowed, and paid by the said Receiver, in violation of the said statutes under which the said Justice had assumed to appoint the said Receiver, and in violation of the rights of the said Bank and its other unfavored creditors.

Sixth Specification.—That on or about the 5th day of November, 1869, the said Justice made another order, entitled in the said three actions, whereby he terminated the said Receivership, and directed the said Receiver, among other things, to pay $100,000 of the assest of the said Bank into the United States Trust Company, to abide certain contingencies in the said order specified; to retain out of the assets of said Bank twelve thousand five hundred dollars as his fees and compensation as such Receiver, and to pay out of said assets twenty-five hundred dollars to the said Receiver's counsel, and five hundred dollars to the attorney of the plaintiff in said actions, and to

restore to the said Bank the balance of its assets, to wit, a large amount of assets not particularly specified, of great value, and certain cash assets, amounting to between two and three hundred thousand dollars.

Seventh Specification:—That the said Osborne was a broker of the said Gould and Fisk in the said gold transactions, and that at the time of commencing the said action in which the said Brown was appointed Receiver, he was not a creditor of the said Bank in any sum whatever. That the said Bank, at the time the said Justice made the said orders, was not insolvent in fact, and that there was no legal or valid ground for the making of the said orders for the appointment of the said Receiver, or for interfering by legal process with the regular banking business of the said Bank, or with its special business and operations as a Clearing House for the transactions in gold of the members of the Stock Exchange, or other of its customers and dealers, and that when several of said unlawful orders were made, it distinctly appeared to the said Justice, on the face of the papers before him on which the said orders were made, and the said Justice well knew, that the said Bank was not, and never had been insolvent, and that the interference by the said Justice with its business in making the said orders, was contrary to law, and in violation of the rights of the said Bank to receive its dues, pay its debts and prosecute its lawful business as a Bank and Clearing House in gold transactions. That the said illegal interference in the affairs of the said Bank caused a loss to the said Bank in a little over one month of upwards of sixty thousand dollars, taken out of its assets under said orders and distributed as gratuities to the said Receivers and lawyers in the said actions, and a further loss in its credit and business, amounting to between two and three hundred thousand dollars. That each and every of the said orders was made against the will of the said Bank; and that if there was any seeming assent thereto of the said Bank, it was not real, the Bank all the time being under duress and the coersion of the said Receivers and of the said Justice.

Eighth Specification.—That on the day after the said first-mentioned order was made, appointing the said Brown, Receiver of the said the Gold Exchange Bank, and restraining the said Bank from doing any business as a Clearing House, to wit, on or about the 30th day of September, 1869, the said Justice illegally and corruptly made another order in an action then pending in the said Supreme Court, in which the said Edward K. Willard was plaintiff, and William H. Neilson, as President of the New York Stock Exchange, Townsend Cox, as President of the New York Gold Exchange, William H. Neilson, Moses H. Wheelock, B. O. White, George H. Broadhead, Townsend Cox, Thomas A. Hoyt, George H. Bend, Thomas I. Akers, and George Phipps were defendants,—and in which Field & Shearman were the plaintiff's attorneys—whereby he enjoined the said defendants and each of them, and each and every officer and member of the New York Stock Exchange and of the New York Gold Exchange: (1.) From buying or selling gold on account of any member of said New York Gold Exchange when the ground of such purchase or sale is the

failure of such member to perform contracts entered into, under, and with reference to the Rules or By-Laws of the New York Gold Exchange, and from declaring or adjudging any member in default, by reason of a failure to perform any such contract, and from expelling or suspending any such member from the said New York Stock Exchange, or interfering with the full exercise of his privileges therein on account of his failure to perform any such contract made or pretended to be made on his account by any officer, trustee or agent of said Stock Exchange, in consequence of his non-performance of any such contract as aforesaid. (2.) From enforcing any of such contracts by any other means than actions in Courts of public justice. (3.) From buying or selling gold on account of any member of said Exchanges under the rules or by-laws thereof, where the ground of such purchase or sale is the failure of such member to perform contracts entered into by him on September 24, 1869, under the rule aforesaid, and from expelling or suspending any such member from the said Exchanges, or either of them, or interfering with the full exercise of his privileges therein, on account of his failure to perform any contract made on his account by any officer of either of the said Exchanges, in consequence of the non-performance of any such contract as aforesaid. That each of the said four suits was brought at the instance of the said Gould and Fisk, and by Field & Shearman, their attorneys, and for their benefit, to prevent the ascertainment and enforcement of the balances due and owing by them to other parties on gold contracts, and transactions made by them and their brokers and agents on the said 24th day of September, 1869; and that the said Gould and Fisk and their said brokers and attorneys, illegally conspired together to prevent the course of justice to the accomplishment of their said illegal purpose, and the said Justice, well knowing the said conspiracy and the purpose of the said parties, corruptly conspired with them in the accomplishment of said illegal purpose by making orders in said actions, first, to restrain and prevent a clearing of the said gold transactions, in the legal and customary manner, by the said Gold Exchange Bank as a Clearing House; and second, to restrain and prevent the adjustment and enforcement of the said gold transactions by the said Exchanges in the legal and customary manner under their by-laws and rules, on the false pretext that the said gold transactions could not be cleared by the said Bank, and could not be adjusted and enforced by the said Exchanges until they had been cleared by the said Bank. And that the said Justice made other like orders against the same defendants in other actions at about the same time brought by other brokers and agents of the said Gould and Fisk, illegally and corruptly in furtherance of the said illegal conspiracy and its purposes.

Ninth Specification.—That the said Justice, on or about the 31st day of October, 1869, made an *ex parte* order enjoining the Mercantile Fire Insurance Company (a corporation duly incorporated under the laws of the State of New York, and doing business in the city of New York) against exercising any of its corporate franchises, collect-

ing any of its dues or demands, or paying any of its debts, or transferring any of its property or effects, except to a Receiver, and appointing a Receiver of all the property and effects of the said corporation, with all the powers of a Receiver in such cases, to the great wrong, injury and loss of the said corporation. That the said order was arbitrarily made, without authority of law, and without due and legal proof of the insolvency of said corporation, or of any fact giving the said Justice jurisdiction to make the said order, the said corporation then being in fact solvent and able to pay all its debts, and able and intending to continue in the prosecution of its corporate business, and not being charged with any illegal or other act rendering it liable to be dissolved; that the petitioner on whose petition the said order was made was the owner of only ten shares of the capital stock of said corporation, which he had purchased but a few days before the said order was made, solely with the intent to present such petition, and get the said Company into the hands of a Receiver for the purpose of gain to such Receiver and to Gratz Nathan, his counsel; and that the said petition did not ask for the dissolution of the said corporation.

Tenth Specification.—That in or about the month of December, 1869, in an action pending in the said Supreme Court, in which one Elizabeth Rodman Bowne was plaintiff, and John Leveridge and others were defendants, the said Justice made an *ex parte* order, appointing one James M. Sweeney Receiver *ad interim* of the real and personal estate held by two of the defendants as executors and trustees, and in the said order mentioned until the further order of the Court, and requiring the defendants to show cause before the said Justice, on the 6th day of January then next, why a Receiver should not be appointed of the said property pending the said action, which cause was shown, and the matters involved heard, argued and submitted before the said Justice on or about the 10th day of January, 1870. That the said Justice, well knowing that there was no just and valid reason for continuing the said Receivership, withheld his decision in said matter until the 25th day of March then ensuing, when he made an order vacating the said order appointing a Receiver, and terminating the said Receivership, and by a subsequent order directed the defendants to pay, or the Receiver to retain, out of the said estate and property in his hands, five thousand dollars, as a compensation to him as such Receiver, and three thousand five hundred dollars to Andrew J. Smith, the said Receiver's counsel. That no fact was stated in the moving papers on which said order appointing a Receiver was made, showing that the said property so ordered into the said Receiver's possession was insecure in the hands of the said defendants; nor was any other fact shown which made such order proper; and that the said Justice illegally and corruptly made the said order appointing the said Receiver, and afterwards illegally and corruptly delayed to make the said order revoking the said appointment, and illegally and corruptly ordered the said illegal and extortionate compensation to be made out of the said property and estate to the said Receiver and his counsel.

SECOND CHARGE.—That he, the said Albert Cardozo, was guilty o mal and corrupt conduct in his office as Justice of the said Supreme Court, in that, being such Justice, he did, at or about the dates hereinafter mentioned, on the application of Messrs. Howe & Hummel, attorneys, finally discharge without bail the persons hereinafter mentioned, upon their being brought before him on *habeas corpus*, they being at the time imprisoned, for the terms hereinafter stated, in the New York Penitentiary on Blackwell's Island, upon conviction by the Court of Special Sessions of the Peace held in and for the city and county of New York, for the misdemeanors hereinafter stated:

Date of Discharge.	Name.	Offence.	Terms of Imprisonment.
January 7, 1868	Daniel Allen		6 months.
" 11, "	Earnest Casper		1 month.
" 20, "	Joseph E. Lynn		6 months.
" " "	Nicholas Langdon		3 months.
May 23, "	Samuel Fuller		4 months.
June 1, "	Eugene Murray		3 months.
" 13, "	Daniel Haley		2 months.
July 6, "	Michael Slate		1 month.
" 17, "	Fanny Price		4 months.
" " "	Thomas Moran		2 months.
" 23, "	Daniel Gilman		4 months.
September 8, "	William Varley		9 months.
" 15, "	Sidney Blauvelt		1 month.
" 25, "	Edward Lane		3 months.
" " "	Charles Williams, alias George Robinson		3 months.
October 5, "	Michael Clancy		3 months.
" " "	James Burns		6 months.
" " "	Harry R. Ellis		2 months.
" 6, "	Mary Gaylor		2 months.
" 14, "	Ellen Harmon and child		4 months.
" 23, "	W. H. Foster		6 months.
" 30, "	Thomas Welsh		3 months.
" " "	Frederick Davis		4 months.
" " "	Patrick McNulty		2 months.
December 5, "	Annie Powers, alias Annie Berge		1 month.
" 9, "	Isaac Rectzenburg		6 months.
" " "	Thomas McGiff		6 months.
" " "	Frank Donnelly		months.
" 22, "	Frank Donnelly		6 months.
" 26, "	Thomas Crawford		6 months.
" 28, "	Abram Sherman		6 months.
January 18, 1869	Mary Wilson		6 months.
February 10, "	Francis Tholes		1 month.
April 19, "	David Flaherty		2 months.
" 21, "	Peter McDonald		6 months.
" 22, "	John Barry		6 months.
May 19, "	Abraham David, alias Big Michael		6 months.
" 10, "	Ferdinand Harmon		6 months.
" 24, "	William Donovan		6 months.
" 28, "	Frederick Dickle		6 months.

Date of Discharge.	Name.	Offence.	Terms of Imprisonment.
June 2, " "	Samuel P. Brownell		2 months.
" " "	Thomas Galton		6 months.
" 7, "	Edward Combs		4 months.
" " "	William H. Stevens		6 months.
" 8, "	Emma Williams		6 months.
" 18, "	John Klensely		4 months.
" 24, "	John Levy		6 months.
August 11, "	Benjamin C. Smith		1 month.
" " "	Harry Wilson		6 months.
September 2, "	George Sundenacter		2 months.
" 15, "	Robert J. Johnson		6 months.
" 29, "	Samuel L. Cohen		6 months.
October 7, "	Adam Herlhorf		4 months.
" " "	Bridget Fabel		3 months.
" 12, "	John Ewel		4 months.
" 13, "	Thomas Flaherty		6 months.
November 5, "	Michael Reynolds		3 months.
" 9, "	John Crawford		6 months.
" 10, "	Thomas Powers		1 month.
" 11, "	Phillip Broderick		6 months.
" 13, "	Michael O'Brien		3 months.
" " "	Julius Tobias		3 months.
" 22, "	William J. Laws		1 month.
" 23, "	William Moore		6 months.
" " "	Henry Vogel		1 month.
" 24, "	Annie Wilson		6 months.
" 26, "	Mary Ann Newell		3 months.
" " "	John Casey		2 months.
December 1, "	John McDonald, alias John Thomas		1 month.
" 27, "	Henry Murphy		6 months.
" 29, "	Edward Forest Mongard		3 months.
January 5, 1870	James McConville		Until cured.
" " "	William H. Smith		6 months.
" 10, "	Daniel Bramiliff		6 months.
" 19, "	Lewis Carter, alias Louis Kurtz		16 months.
" 25, "	Jacob Sewell		1 month.
" 28, "	Thomas Noble		6 months.
" 29, "	Sarah Young		2 months.
February 24, "	Luke Tweney		4 months.
March 1, "	Lyford Gullenwerker		3 months.
" " "	Charles Dimond		3 months.
" " "	Dennis Brackley		6 months.
April 21, "	Hugh McAvee		4 months.
May 30, "	Henry Allon		6 months.
June 8, "	John Ross		6 months.
August 22, "	Patrick H. McClure		3 months.
October 4, "	John R. Carslile		6 months.
" 11, "	John Graham		6 months.
" 15, "	David Bland		6 months.
" 19, "	Edward Mulholland		6 months.
" 29, "	Daniel Tullman		4 months.
" 31, "	Christopher Bray		6 months.
November 1, "	George Taylor		3 months.
" 9, "	Peter Parrett		1 month.
" 20, "	Mark Hallanbeck		6 months.
" 20, "	Richard Cuff		2 months.
Dec'r 23, "	William Hammond		6 months.
" " "	William A. Jackson		6 months.
" 24, "	Michael Carr		6 months.

Date of Discharge.	Name.	Offence.	Term of Imprisonment.
December 29, 1870	Francis Quiller		1 mo., 3 days.
January 11, 1871	Alias James Hasley		6 months.
" 17, "	Lewis Livingston		3 months.
" 30, "	Valentine Weisenke	Petit larceny	3 months.
February 1, "	Joseph A. Lowry		
" 3, "	John Frederick	Petit larceny	4 months.
" 8, "	William Hovan	Assault	6 months.
" " "	Conrad Welking	Petit larceny	3 months.
" 24, "	Thomas Baker		
March 20, "	Akkerbor Phillips	"	6 months.
" " "	Lewis Michael	"	6 months.
" " "	Moses Henry, alias Hayes	Assault and battery	3 months.
" 27, "	Charles M. Barry	"	16 months.
" 30, "	Herman Sedendorf	"	4 months.
" 31, "	James H. McGuire		
April 11, "	Nellie White	"	6 months.
" 20, "	William F. Baker, (alias James Morris,)	"	6 months.
May 1, "	George N. Fisher	"	6 months.
" 26, "	Henry Evert	"	4 months.
June 3, "	Stephen H. Roman	Personating an officer	6 months.
" 7, "	John McGinnis	Assault and battery	6 months.
" 10, "	William P. Shimmock,	Disorderly house	12 months.
" " "	Robert Smith,		
July 1, "	Edward Haskins	Petit larceny	6 months.
" 7, "	Daniel Fox	Representing himself to be a policeman,	12 months.
" 11, "	George Warner, alias Henry Allen,	Petit larceny	6 months.
" 18, "	Michael McMahan	Dangerous weapons	6 months.
August 4, "	Joseph Silberstein	Petit larceny	6 months.
September 9, "	Albert Meyers	Disorderly house	12 months.
" " "	Patrick McGowen	Assault and battery	3 months.
October 4, "	Adelaide Beaumont	Disorderly house	6 months.
" 12, "	Silas Gordon	Petit larceny	6 months.
" 31, "	William Johnson	"	4 months.
" " "	Thomas Rooney	"	6 months.
" " "	William Donahue	"	6 months.
" " "	John McGee	"	4 months.
November 1, "	Thomas Guinness, John McGuinness,	Assault and battery	12 months.
" 6, "	John H. Bridgwater	Dangerous weapons	9 months.
" " "	William Beaumont	Disorderly house	12 months
December 8, "	Timothy Collins,	Prize fighting	12 months
" " "	William Edwards,		

Such terms of imprisonment in each such case being unexpired at the time of such discharge.

That in the case of each such discharge, the said Albert Cardozo being such Justice, did conspire with the said Messrs. Howe & Hummel to procure the prisoner to be brought before him, and did wickedly and corruptly discharge such prisoner without just, legal, or any cause, as was then and there well known by the said Albert Cardozo, thereby not only permitting the unlawful release from imprisonment of persons legally imprisoned on final conviction, but co-operating with the

said Messrs. Howe & Hummel to enable them to coerce large sums of money from such persons, in consideration of procuring such discharge, to the perversion and obstruction of justice and the due administration of the law.

THIRD CHARGE.—That he, the said Albert Cardozo, was guilty of mal and corrupt conduct in his office as Justice of the said Supreme Court, in that being such Justice he did, by virtue of the power and authority of his office, on or about May 7, 1869, cause to be imprisoned in the city prison of the city of New York, Mary Pearsall and Joanna Connor, without complaint, evidence or examination against them, and without any just or legal cause, as he then and there well knew, on the pretence that they were charged with keeping a bawdy house, and with a criminal contempt of the Supreme Court of the State of New York, when, as he, the said Albert Cardozo, then and there well knew, neither such charges nor any charges had been made against them—the object of the said Albert Cardozo being wrongfully and corruptly to intimidate and oppress the said Mary Pearsall and Joanna Connor.

That he, the said Albert Cardozo, further to accomplish his said wrongful and corrupt purpose, did procure his Associate Justices of the said Supreme Court in and for the First Judicial District, to consent to make returnable before him any writ of *habeas corpus* which should be issued for the said Mary Pearsall and Joanna Connor; and an application for a writ of *habeas corpus* on or about May 13, 1869, being made to one of such Associate Justices, did procure such Associate Justice to make the same returnable before him, the said Albert Cardozo; and on or about May 14, 1869, upon the return of such writ, did wilfully and corruptly refuse to inquire into the cause of such imprisonment, and wilfully and corruptly adjourned the proceeding to May 21, 1869, and then again to May 25, 1869, and then again to May 26, 1869, when he did cause the said Mary Pearsall and Joanna Connor to be discharged; the said Albert Cardozo, during all the intervening time, keeping the said Mary Pearsall and Joanna Connor, imprisoned in the said city prison, and making such adjournments against their consent and remonstrance.

That on or about May 12, 1869, the said Albert Cardozo, with the same wrongful and corrupt purpose, and further to deprive the said Mary Pearsall and Joanna Connor of the benefit of counsel, learning that John D. Townsend, an attorney of the said Supreme Court, had been retained by them, to intimidate him and prevent him from the discharge of his duty, did say to him the following words, or words of like effect: "Do not touch that case; if you do you will displease "me; if you take this case, you need never expect any favors from "me while I am on the Bench"—to the perversion and obstruction of justice, and the due administration of the law, and in violation of his duty as such Justice of the Supreme Court.

FOURTH CHARGE.—That he, the said Albert Cardozo, was guilty of mal and corrupt conduct in his office as Justice of the said Supreme Court, as hereinafter stated, that is to say: On or about July 2, 1868, in an action for divorce upon the ground of adultery by Annie E. Fields, against Thomas C. Fields, her husband, the Hon. George G. Barnard, Justice of the said Supreme Court in which the said action was then and there pending, made a certain order purporting to be made at a Special Term of the said Supreme Court, held before him on July 2, 1868, and stated that it was made after hearing counsel both for the plaintiff and for the defendant in such action, by which order it was adjudged that no alimony or provision for her support should be allowed to the said Annie E. Fields, though judgment of divorce was given in her favor. That such order was wholly irregular and void, in that the motion upon which the same was made was not heard before the said Justice Barnard, but before another Justice of the said Supreme Court

That prior to September 22, 1868, a motion was made before the said Albert Cardozo, sitting at a Special Term of the said Supreme Court, to vacate so much of the said order as denied alimony or a provision for her support to the said Annie E. Fields, for the reason of the said irregularity; and the said Albert Cardozo, by his order made on or about September 22, 1868, wilfully and corruptly denied the said motion, thereby preventing the said Annie E. Fields from obtaining such alimony and support, though, as the said Albert Cardozo then and there well knew, the papers before him showed that she was entitled thereto, to the great wrong and injury of the said Annie E. Fields, though deciding the said order to have been irregular, he then and there being wrongfully and corruptly influenced thereto by the wish improperly to favor the said Thomas C. Fields, between whom and the said Albert Cardozo there then and there existed intimate personal and political relations.

FIFTH CHARGE.—That he, the said Albert Cardozo, was guilty of mal and corrupt conduct in his office as Justice of the said Supreme Court, in that, applications being made to him as such Justice from time to time in actions for the foreclosure of mortgages, and for the partition of real estate, for the appointment of Referees to take proof of the facts involved in such actions, and also to sell the premises affected thereby, the said Albert Cardozo, as such Justice, has taken advantage of his office to appoint as such Referees certain favorite persons, with the wrongful and corrupt purpose subsequently to allow to such persons on the pretence of compensation for their services, grossly, extravagant and exorbitant sums.

Specification.—That by the minutes of the Special Term Clerk of said Supreme Court for the said First Judicial District, it appears that during the years hereinafter mentioned there were made by the said Albert Cardozo the number of references hereinafter stated, of which

there were ordered by the said Albert Cardozo to Gratz Nathan, William M. Tweed, Jr., and Andrew J. Smith the number of references hereinafter set forth:

Year.	Number of References.	References to Gratz Nathan.			
		Wm. M. Tweed, Jr.		A. G. Smith.	
1868	170		30		31 92
1869	157		33		35 84
1870	115				14 95
1871	69				4 64

The said Albert Cardozo, in making such references to the said Gratz Nathan, well knowing that the parties in interest were opposed to him as Referee, he using his power as such Justice to compel them to assent thereto, and also intending and disigning subsequently to make to the said Gratz Nathan an illegal, extravagant and exorbitant allowance, as was subsequently done by him, the said Albert Cardozo, being influenced thereto by the wrongful and corrupt motive to illegally benefit the said Gratz Nathan, between whom and himself there then and there existed intimate personal relations, the said Gratz Nathan being the nephew of him the said Albert Cardozo.

II.—CHARGES AGAINST THE HON. GEORGE G. BARNARD, A JUSTICE OF THE SUPREME COURT.

FIRST CHARGE.—That he, the said George G. Barnard, was guilty of mal and corrupt conduct in his office as Justice of the said Supreme Court, in that, being such Justice, he did, at or about the dates hereinafter mentioned, on the application of Messrs. Howe & Hummel, attorneys, finally discharge without bail, among others, the persons hereinafter mentioned, upon their being brought before him on *habeas corpus*, they being at the time imprisoned for the term hereinafter stated, in the New York Penitentiary on Blackwell's Island, upon conviction by the Court of Special Sessions of the Peace, held in and for the city and county of New York, for the misdemeanors hereinafter stated:

Date of Discharge.	Name.	Offence.	Term of Imprisonment.
February 29, 1868.	Ellen Murphy		4 months.
May 6, "	Philip Leonard		2 " 8 days.
" 15, "	Wilson A. Bedell		3 months.
" 17, "	Jane Earle		4 "
" 21, "	John Farrell		1 "
February 28, "	George Williams		1 year.
August 6, "	John Gleason		6 months.
" 18, "	Jacob Best		3 "
" 28, "	Eustice Reynolds		4 "
October 8, "	Patrick Pickett		3 "
" 15, "	Richard O'Keefe		2 "
" 17, "	William Braetz		3 "
" 27, "	John Woods (alias Thos. Baker.)		6 "
November 11, "	Jacob Winer		3 "
" 18, "	Patrick Shanny		6 "
" 24, "	Michael Smith		6 "
" 28, "	George Gardner		3 "
December 9, "	John Gould		6 "
" 9, "	James C. Charleton		6 "
January 15, 1869.	Niel Costello		1 year.
March 3, "	Annie Gundemann		4 months.
" 6, "	Dennis Holligan		2 "
" 17, "	Daniel B. Wagner		6 "
April 7, "	George Wagner		4 "
" 7, "	Timothy Conolly		3 "
" 13, "	Edward Lockwood		2 "
" 14, "	Michael Kelly		6 "
" 14, "	Dennis Daley		2 "
" 16, "	John W. Graff		4 "
August 14, "	James Johnson		6 "
" 28, "	Daniel Fox		3 "
July 2, 1870.	James Hughes		6 "
August 29, "	Arthur Higgins		4 "
October 12, "	Charles McLaughlin		6 "
December 2, "	James Rooney		6 "
November 4, 1869.	Michael Varley		6 "
December 3, "	Thomas Reil		6 "
" 6, "	Edward Burns		2 "
September 9, 1870.	John Mulvihill		6 "

Such term of imprisonment in each such cases being unexpired at the time of such discharge.

That in the case of each such discharge the said George G. Barnard did conspire with the said Messrs. Howe & Hummel to procure the prisoner to be brought before him, and did wilfully and corruptly discharge such prisoner without just, legal, or any cause, as was then and there well known by the said George G. Barnard, thereby not only permitting the unlawful release from imprisonment of persons legally imprisoned on final conviction, but co-operating with the said Messrs. Howe & Hummel to enable them to coerce large sums of money from such persons in consideration of procuring such discharge, to the perversion and obstruction of justice and the due administration of the law.

That the said George G. Barnard has been guilty of mal and corrupt conduct in his office as Justice of the said Supreme Court, in what is known as The Albany and Susquehanna Railroad Litigation.

SECOND CHARGE.—That prior to the month of July, 1869, James Fisk, Jr. and Jay, Gould conspired together, and with other parties whose names are unknown, to obtain possession and control of the Albany and Susquehanna R. R. Company, its property and franchises, and to defraud said Company and its stockholders of its and their property, and to that end the said Fisk and Gould conspired together, and with other parties whose names are unknown, falsely to move and maintain certain suits and falsely and maliciously to procure Joseph H. Ramsey, Henry Smith, William L. M. Phelps, Robert H. Pruyn to be arrested, and to procure said James Fisk, Jr., Jay Gould and other confederates to be chosen Directors of said Company, in fraud of the rights of a majority of the *bona fide* stockholders of said Company, and to effect the object of said couspiracy, by the use and abuse of the process of the Supreme Court of the State of New York.

And in order to aid Fisk, Gould, and others, their confederates, to effect the object of said conspiracy, and conspiring with them for the purposes aforesaid, George G. Barnard, then being a Justice of the Supreme Court of the State of New York, did, at divers times, between the first day of August, 1869, and the seventh day of September, 1869, wickedly and corruptly, at the special instance and request of said Fisk and Gould, and others in their interest, grant divers orders and writs of said Supreme Court, appointing James Fisk, Jr., and Charles Courter, Receivers of all the property of said railroad, enjoining Joseph H. Ramsey from doing any of the duties he was required by law to perform as the President of said Company, taking from the possession of the lawful owners 2,400 shares of the stock of said Company, by an order, illegally issued, without notice to any party whatever, arresting the President and counsel of said Company, at the very moment of the annual election for Directors of said Company, with the intent and effort of hindering them from performing the duties required of them by law, and holding them to bail in excessive and exorbitant amounts, with the intent of depriving them of their liberty at the time of such election, and thereby enabling said Fisk and Gould to carry said electon, as they were then unsuccessfully attempting; all said orders and writs being illegally and corruptly granted in violation of the Constitution and laws of the State of New York.

Specification 1st.—The said George G. Barnard, on the fourth day of August, 1869, in a suit, wherein David Wilbur was plaintiff, and the Albany & Susquehanna Railroad Company, Joseph H. Ramsey, and others were defendants, did corruptly, and to effect the objects of said conspiracy, grant an order suspending said Joseph H. Ramsey, who was President of said Company, from exercising his offices of President or Director, or either of them, and from issuing any stock of said Company, or in any way interfering in its affairs.

The said suit was commenced by Messrs. Field & Shearman, the regular attorneys and counsel of said Fisk and Gould, as plaintiffs' attorneys. It was brought in New York county. None of the parties to said suit resided in New York county. The property of the said railroadwas none of it New York county. Said injunction order was granted without any undertaking being required on the part of the plaintiff. There was no affidavit laid before the Court with the complaint to obtain such order. No proof was laid before the Court that said Ramsey had done, or was about to do, any illegal or wrongful act. No proof was laid before the Court that any person whatever was about to do any act whatever injurious to the plaintiffs. The said Ramsey was by said order enjoined from doing any act whatever required of him by law in the execution of the duties of his said office. Said order was granted in violation of law, as said Barnard well knew.

Specification 2d.—On the 6th day of August, 1869, in a suit, wherein Azro Chase was plaintiff, and the Albany & Susquehanna Railroad Company and others were defendants, the said George G. Barnard did corruptly, and in order to effect the object of said conspiracy, grant an order, appointing James Fisk, Jr., and Charles Courter, Receivers of all the property of the said Albany and Susquehannna Railroad Company.

The said suit was commenced by Messrs. Field & Shearman, the regular counsel and attorneys of said Fisk and Gould, as plaintiffs' attorneys. Said suit was brought in New York county. None of the parties to said suit resided in New York county. None of the property or railroad of said Company was situated in New York County. Said order was granted *ex parte* without notice to said Company Said George G. Barnard, on said sixth day of August, 1869, as late as five o'clock in the afternoon, was in Poughkeepsie, at the bedside of his mother, who was then dangerously ill, and who died on the 8th of August, 1869, two days afterwards. He left Poughkeepsie, and went to New York, in response to a telegram sent to him by James H. Coleman. Said telegram was sent under a free pass, held by James Fisk, Jr., and by his direction and request. It directed an answer to be sent to the house of Mrs. Mansfield, in New York, with whom said James Fisk, Jr., then resided. Said Barnard sent an answer to said telegram, directed to said house of Mrs. Mansfield. Said Barnard, on his arrival in New York, went immediately to said house, and there signed said order. At the time of signing said order, another Justice of the Supreme Court was regularly holding, in said county of New York, the Chambers of said Court, where, by the rules of practice of said Court, any application for such an order should rightfully have been made. Said order was granted corruptly, on the personal request of said Fisk, in violation of law, without any cause whatever being shown to warrant the granting such order, and without any jurisdiction to grant the same.

Specification 3d.—On the seventh day of August, 1869, in said suit, wherein Azro Chase was plaintiff, and the Albany and Susquehanna Railroad Company were defendants, the said George G. Barnard, at

the city of New York, did corruptly, and in order to effect the object of said conspiracy, grant an order whereby he enjoined Robert L. Pruyn a Receiver, appointed by the Supreme Court, in another action in Albany county, the Sheriff of Albany county, and the Police Commissioners of Albany, "from disturbing or interfering with Charles Courter and James Fisk, Jr., Receivers appointed in this action in the performance of their duties as such Receivers; from interfering with the possession of such Receivers; from hindering or delaying them in taking possession of any property or effects of the above-named Railroad Company, or held in trust for it; from refusing or neglecting to deliver to the said Receivers all and every the property and effects of the said Company, or that may be held in trust for the same, of any manner or nature, real or personal, and from inciting or encouraging any opposition, or *permitting any opposition to be made* to the said Receivers in the discharge of their duties as such." Said Police Commissioners and Sheriff of Albany were made parties to said suit by a supplementary complaint ordered by said Barnard to be filed on said seventh of August, 1869, and by said order they were required, under fear of punishment for contempt, to aid and assist said Fisk and Courter in taking property from the possession of a Receiver of the Supreme Court, and thereby render themselves liable for that contempt. Said injunction order was granted on an affidavit of Thomas G. Shearman, one of said plaintiff's attorneys, which affidavit sworn to in New York, and relating entirely to matters which were alleged to have taken place that same day in Albany, showed on its face that said Shearman had no knowledge as to any wrongs done, or about to be done, by said Sheriff or said Police Commissioners, who were then in Albany. Said order was granted when said Barnard was not holding any regular branch of the Supreme Court, but while another Justice was holding the Chambers in New York county of said Court, to whom application for said order should regularly have been made under the rules and practice of the Court. At the same time and place said Barnard corruptly, and with the intent aforesaid, granted a so-called writ of assistance, directing the Sheriff of any county in New York, where said Company held property, to put said Fisk and Courter in posseseion of said property.

Said writs of assistance were granted in violation of law, and without jurisdiction. No specific property was described or mentioned in them. Said injunction and writs were granted and obtained with the intent that they should be at once served and executed, in Albany and other distant portions of the State of New York, by telegraph, without the production of the original so-called writs and orders; and they were so served and executed.

And in the attempted execution of said so-called writs, large bodies of men were brought into armed conflict; and the peace, lives and property of citizens of the State of New York, were greatly endangered.

Specification 4th.—On the fourteenth day of August, 1869, in a suit wherein Joseph Bush was plaintiff, and the Albany and Susquehana R. R. Company and others were defendants, said George G.

Barnard did corruptly, and in order to effect the object of said Company, grant an order whereby William J. A. Fuller was appointed Receiver of 2,400 shares of the Stock of said Company, the property of David Groesbeck and others. The plaintiff's Attorneys in said suit, were Messrs. Field and Shearman, the regular Attorneys and Counsel of Fisk and Gould. Said order was granted exparte, without notice to any of the defendants. No affidavit whatever was laid before said Barnard with the complaint, on which alone, said order was granted. Said complaint clearly showed that the plaintiff had no interest whatever, legal or equitable, in a single share of said stock. Said order was granted in violation of law, at the instance and request of the counsel of said Fisk, with the corrupt purpose and intent on the part of said Fisk and said George G. Barnard that said Receiver should thus illegally gain possession of shares, and unlawfully vote on said shares at the election of Directors of said Company, for said Fisk and Gould as such Directors; and said Receiver did so unlawfully vote for said Fisk and Gould.

Specification 5th.—On the ninth and tenth of August, 1869, said George G. Barnard did, in the suits aforesaid, and in other suits, issueand grant divers writs and orders, falsely purporting to be issued and granted by him in the Supreme Court of the city of New York, but that said orders and writs were in fact, by said Barnard, granted and issued at Poughkeepsie, on the day after his mother's death, and on the day of her funeral, corruptly, and in order to effect the objects of the conspiracy aforesaid.

Specification 6th.—On the sixth day of September, 1869, in a suit wherein the Albany and Susquehanna R. R. Company were nominally plaintiffs, and Joseph H. Ramsey, Henry Smith, and Robert H. Pruyn and William L. M. Phelps were defendants, the said George G. Barnard did corruptly, and in order to effect the objects of said conspiracy, grant an order for the arrest of said Ramsey, Smith, Pruyn and Phelps, holding them to bail in the sum of twenty-five thousand dollars. Said suit was commenced by Messrs. Field & Shearman, as plaintiff's attorneys. Said Field & Shearman, had no valid authority to appear, for said George G. Barnard well knew that said Field & Shearman had no valid authority to appear for said plaintiff. There was no evidence before said Barnard that said defendants had committed any wrong whatever. The papers laid before said Barnard showed that the said defendants had not committed any wrong whatever, and that there was no cause of action whatever against them, or either of them. Said bail of twenty-five thousand dollars was in an excessive and exorbitant amount. Said order was granted late in the afternoon of the day before the annual election of Directors of said Company, as said Barnard well knew. It was granted when another Justice of the Supreme Court in said city of New York was holding Chambers of said Court, to whom, under the rules and practice of said Court, an application for an order should regularly have been made. Said Ramsey was the President and a Director of said Company, said Phelps was its Secretary, and said Henry Smith was its leading counsel, as said Barnard

well knew. Said order was procured with the corrupt and wicked intent to arrest said Ramsey, Smith, Phelps, and Pruyn at the hour of said election, and thereby hinder and prevent them from discharging their legitimate duties as such President, Secretary, and counsel, as said Barnard had good reason to know; said order was used so as to arrest said parties at said time for the purpose last aforesaid.

Third Charge.—That the said George G. Barnard has been guilty of mal and corrupt conduct in his office as Justice of the said Supreme Court, in the litigation known as the

English Erie Stock Litigation.

That prior to the month of June, 1870, James Fisk, Jr., Jay Gould, and Frederick A. Lane had been Directors of the Erie Railway Company. That Messrs. Heath and Raphael, at said time, were the lawful owners of sixty thousand shares of the common capital stock of said Erie Railway Company of the par value of six million dollars, and had presented the certificates at the office of said Company, for the purpose of identification, and to have them certified as genuine. That said Fisk, Gould and Lane thereupon conspired together, and with other parties, whose names are unknown, to cheat and defraud the said Heath and Raphael of their said shares, and to that end to use and abuse the process of the Supreme Court of the State of New York.

That the said George G. Barnard, then being such Justice of said Supreme Court, conspired with said Fisk, Gould and Lane, for the purposes aforesaid, and in order to effect the objects of said conspiracy, did wickedly and corruptly, and in violation of law, grant certain orders of said Supreme Court, whereby he appointed certain friends of himself, and of said Fisk, Gould and Lane, Receivers of the said stock, and thereby unlawfully took the same from the possession of the rightful owners thereof, without process of law.

Specification 1st.—In an action pending in the said Supreme Court wherein James Fisk, Junior, and others were plaintiffs, and said Heath and Raphael and others were defendants, the said George G. Barnard, as Justice as aforesaid, did, on the 23d day of June, 1870, corruptly and illegally, in order to effect the purposes of said conspiracy, grant an order wherein he appointed James H. Coleman Receiver of said sixty thousand shares of stock. That said Heath and Raphael, the lawful owners of said stock, were not then within the jurisdiction of said Court; nor were they at any time served with its process. Said order was granted without notice to any of the owners of said stock, and without a hearing, and on papers which clearly showed, as said Barnard well knew, that none of the plaintiffs had any interest, legal or equitable, in any of said stock, and which clearly showed that the said Heath and Raphael were the lawful owners thereof. Said order was granted and obtained with the corrupt intent to place said shares in the possession and control of said Fisk, Gould and Lane, and they were so placed by said Receiver in the possession and control of said Fisk, Gould and Lane. Said action was brought with no intention or expectation of ever honestly prosecuting the same to an end, but

merely for the purpose of so gaining possession of said stock, as the said Barnard then and there well knew, and was afterwards abandoned and discontinued by the plaintiffs, on the removal by the defendants to the United States Circuit Court, from the Court where said Barnard was a Justice.

Specification 2d.—That after the said removal of said cause to the said United States Circuit Court, said James H. Coleman became and was the Receiver and officer of said Circuit Court, and in the said action, an order was duly made on the 11th day of March, 1871, discharging said Receivership, and directing a delivery by said Coleman to said Heath and Raphael of said shares. That notice had been before given of the application for said order, and no opposition was made thereto by the plaintiffs, there being, as they well knew, no grounds for any such opposition; and it was anticipated by said Fisk, Gould, Lane and Barnard, that said last mentioned order would be asked and granted. That on or about the 14th day of February, 1871, in another action commenced by the same attorneys as last mentioned action, in said Supreme Court, wherein said Fisk and others were plaintiffs, and said Heath, Raphael, and said Receiver Coleman were made parties defendant, said Barnard, as Justice as aforesaid, did corruptly, and in order to effect the object of the conspiracy aforesaid, grant an order, whereby he appointed one Charles Robinson Receiver of the same shares of stock. The papers on which said order was granted clearly showed, and said Barnard well knew that said shares were then in the possession of said Coleman as a Receiver and officer of the said United States Circuit Court. Said order was granted and obtained with the corrupt intent to hinder said Heath and Raphael, the rightful owners of said stock, from obtaining possession of said stock, and with the corrupt intent to cheat and defraud them thereof, and to enable said Fisk, Gould and Lane to retain possession of the same which they then had.

FOURTH CHARGE.—That the said George G. Barnard was guilty of mal and corrupt conduct in his office as Justice of the Supreme Court, in this:

That in an action for divorce, on the ground of adultery, in said Supreme Court, wherein Annie E. Fields was plaintiff and one Thomas C. Fields was defendant, there being no answer, a motion was made, argued, and submitted on the part of said plaintiff against said defendant, that said defendant be compelled to pay the said plaintiff a suitable alimony. That said motion was so argued and submitted before Hon. Daniel P. Ingraham, Justice of said Court, on or about the 30th day of June, 1868. That no decision was ever rendered on said motion by said Justice Ingraham; that thereafter, and on or about the 6th day of July, 1868, the said Justice Barnard decided said motion, so heard by said Justice Ingraham, and granted an order whereby he denied said motion for alimony. Said Barnard had not heard the said motion. That he decided the same partially, corruptly, and illegally, in violation of the laws and statutes of the State of New York, with the unlawful and corrupt intent of oppressing said plaintiff, and

depriving her of her lawful rights, and of showing unlawful favor to the said defendant, Thomas C. Fields, who was a personal and political friend of said Barnard.

Fifth Charge.—That the said George G. Barnard was guilty of mal and corrupt conduct in his office as Justice of said Supreme Court, in this:

That on the 31st day of October, 1868, James O'Hara, Samuel Fitzgerald. Thomas Wenhold, James Watson, and Thomas Seymour had been arrested, charged with attempting to illegally register themselves as voters at an election wherein said Barnard himself was a candidate for election as a Justice of said Court, and were then held in custody under said charge by the Superintendent of the Metropolitan Police of the city of New York. That on the evening of said day, the said George G. Barnard did corruptly and illegally discharge said prisoners from imprisonment under a writ of *habeas corpus*. That said Barnard himself granted said writ, and made the same returnable before himself, at his own residence, in the city of New York. That no notice of the hearing on said writ was given to the District Attorney, as required by law. That said prisoners were taken under said writ to the residence of said Barnard, but were not produced before him, nor did counsel appear before him, either on behalf of said prisoners, or on the part of the people of the State of New York. That no return to said writ was made before said Barnard, and said writ was made returnable at so early an hour that no return thereto could be made, and with the corrupt and unlawful intent, on the part of said Barnard, that no return should be made. Said Barnard then and there ordered the said prisoners to be discharged, neither the prisoners, their counsel, nor any counsel for the people appearing before him, nor any return being made, as aforesaid. That said discharge was so ordered by said Barnard unlawfully, corruptly, and in pursuance of a conspiracy entered into by said Barnard with the counsel of said prisoners and other parties unknown, and with the intent thereby to enable said prisoners to escape the punishment prescribed by law for the offences whereof they were accused.

Sixth Charge.—That he, the said George G. Barnard, was guilty of mal and corrupt conduct in his office, as Justice of the said Supreme Court, in that, applications being made to him as such Justice, from time to time, in actions for the foreclosure of mortgages, and for the partition of real estate, for the appointment of Referees to take proof of the facts involved in such actions, and also to sell the premises affected thereby, the said George G. Barnard, as such Justice, has taken advantage of his office to appoint as such Referees certain favorite persons, with the wrongful and corrupt purpose subsequently to allow to such persons, on the pretence of compensation for their services, grossly extravagant and exorbitant sums.

Specification.—That by the minutes of the Special Term Clerk of the Supreme Court for the First Judicial District, it appears that,

during the years hereinafter mentioned, there were made by the said George G. Barnard, the number of references hereinafter stated, of which there were ordered by the said George G. Barnard to James H. Coleman, the number of references hereinafter set forth:

Year.	No. of References	References to James H. Coleman.
1869	57	21
1870	125	51
1871	78	39

The said George G. Barnard, in making such references to the said James H. Coleman, well knowing that the parties in interest were opposed to him as Referee, he using his power as such Justice to compel them to assent thereto; and also intending and designing subsequently to make to the said James H. Coleman an illegal, extravagant and exorbitant allowance, as was subsequently done by him, the said George G. Barnard being influenced thereto by the wrongful and corrupt motive to illegally benefit the said James H. Coleman, between whom and himself there then and there existed intimate personal relations.

SEVENTH CHARGE.—That he, the said George G. Barnard, was guilty of mal and corrupt conduct in his office as Justice of the said Supreme Court, in that, having conferred upon him by law the power to grant allowances, in addition to taxable costs, in actions pending in the said Supreme Court, he has abused the said power, by wrongfully and corruptly granting excessive, unconscionable, and grossly extravagant allowances, to the great wrong, injury, and oppression of the parties upon whom the same were imposed.

Specification.—The following cases are specified by way of illustration. Particulars will be supplied:

EIGHTH CHARGE.—That he, the said George G. Barnard, has been guilty of mal conduct in his office as Justice of the said Supreme Court, in that, during all the time he has occupied his said office, his conduct, while sitting upon the Bench, discharging his official functions, has been habitually indecorous and unbecoming; his remarks and expressions have been vulgar, lewd, and indecent; has indulged in coarse and scurrilous abuse of respectable members of the Bar, and of other persons; has openly shown gross and outrageous favoritism for certain counsel and certain litigants; and gross and outrageous unfairness towards certain other counsel and litigants, and he has openly avowed and permitted it to be understood that, in the performance of his official duties, he is influenced by wrongful, corrupt and improper motives; and that he so discharges his duties as to benefit his friends, to the great scandal and disgrace of the administration of the law, and

to the great dishonor and discredit of the high office to which he has been elected.

NINTH CHARGE.—That the said George G. Barnard was guilty of mal and corrupt conduct in his office, as Justice of the Supreme Court, in that, being such Justice, he did make various orders in an action pending in the said Court, in the years 1868 and 1869, in which one James Fisk, Jr., was plaintiff, and the Union Pacific Railroad Company, and others, were defendants, enjoining certain proceedings of the said Union Pacific Railroad Company, and also appointed a Receiver of the property and effects of the said Company, and also authorizing and directing various violent and lawless proceedings against the said Company, by the said Receiver, to the great wrong and injury of the said Company and its stockholders, and thereby bringing the administration of justice in the said Court into public reproach and contempt; which said orders were not authorized or justified by the facts and circumstances appearing in the papers on which they purported to have been made, but were grossly inconsiderate, partial, arbitrary, and contrary to the due course of law. That the said orders were made at the instigation of, and in collusion with, the said James Fisk, Jr., the said plaintiff in this action, who was then an intimate personal friend of the said Justice, and with the intent to thereby enable the said Fisk to unlawfully extort money from and otherwise wrong, injure and oppress the said Company and its stockholders. That said orders were made, and proceedings had, in pursuance of an unlawful conspiracy, entered into by and between the said George G. Barnard, James Fisk, Jr, and other parties unknown, for the perversion and obstruction of justice and the due administration of the laws, in respect of the matters hereinbefore set forth.

RECORD OF EVIDENCE

Taken before the Judiciary Committee of the Assembly of the State of New York, appointed to investigate the charges made by the BAR ASSOCIATION *of New York against* JUDGE CARDOZO.

Present—Hon. A. CARDOZO, Messrs. FULLERTON & OWEN, of Counsel for accused, and Messrs. VAN COTT, PARSONS & STICKNEY, of Counsel for the Bar Association.

By Mr. VAN COTT:

Mr. Chairman: It is necessary that the County Clerk or his representative be called upon to produce documents from the County Clerk's office.

By Judge FULLERTON:

Mr. Chairman and Gentlemen of the Committee: We ought to have the charges, or copies of them, before calling the witnesses.

By Mr. VAN COTT:

We will lay on the table of the Committee a copy of the charges that were yesterday to be perfected by some verbal corrections.

By MEMBER OF COMMITTEE:

I move that a copy of the charges be furnished to the party accused.

By Mr. VAN COTT:

We will furnish a copy of the charges to the parties to-morrow. I suppose I am required to read the whole of the first charge, at least that part on which we shall produce evidence to-day.

(Mr. VAN COTT reads first charge against Jude CARDOZO.)

Mr. CHARLES E. LOEW, a witness on the part of the prosecution, called and sworn by the Chairman of the Committee, testified as follows:

Q. Do you hold the office of County Clerk of the city and county of New York? A. Yes, sir.

Q. Have you produced certain papers from your files, in obedience to a subpœna of the Committee? A. I have all the papers called for.

Q. Will you please produce the complaint in an action in the Supreme Court, in which Charles J. Osborne is plaintiff, and the New York Gold Exchange Bank is defendant? A. The summons is here.

Q. Will you state the time filed? A. Twenty-ninth day September, 1869.

(Mr. VAN COTT offered in evidence summons and complaint. Accepted in evidence, and marked by Chairman Exhibit A.)

By Mr. VAN COTT:

(Charles J. Osborne is written over the name of Benjamin E. Smith, Jr. The name of the plaintiff is a substituted name for that of the party originally there, as will appear hereafter in the investigation.)

Q. Will you produce the complaint in the case of Benjamin Carver and Watts Carver against the Gold Exchange Bank? What date was the original order filed against the Bank? A. On 29th day of September.

(Order read in evidence, marked Exhibit B. The complaint in the case was also offered in evidence and accepted and marked Exhibit C.)

The summons and the complaint were filed fifth day October, 1869.

By Hon. Mr. NILES:

Q. The Security was by the temporary Receiver? A. Yes, sir.

By Mr. VAN COTT:

Q. Have you among the papers called for any security filed by the plaintiff at the time of commencing this action? A. I think not.

I now produce from the files the original complaint of Benjamin Carver and Watts Carver against the Gold Exchange Bank, (marked as above, Exhibit C.)

Q. Will you produce the complaint in the case of Lloyd and Hamilton against the Gold Exchange Bank, filed October 4, 1869?

(Offered and accepted in evidence, marked Exhibit D.)

Q. Will you produce from your files an order entered in the three actions on the 9th day October, and filed on October 9? A. Yes, sir.

(Offered and accepted in evidence and marked Exhibit E This was an order to show cause why a Receiver should not be appointed, etc. At the foot of the order is consent for renewal of the foregoing order.) The Bank had no standing in Court. It was in the hands of a Receiver.

Q. Will you produce another order, made in the three actions already referred to, on the 9th October?

By Hon. Mr. NILES:

Q. Do you put in anything to show that at this time the Bank was solvent? It was originally charged that the Bank was insolvent.

By Mr. VAN COTT:

A. It does not appear from any of the papers I have read, unless its solvency is a matter of inference.

By Hon. Mr. TILDEN:

Q. Do you know whether there are any other papers up to this time? A. I have brought all the papers the subpœna called for.

By Hon. Mr. NILES:

Q. Will you be kind enough to say whether there are any other papers relating to these suits? A. There is another paper, John S. Sauzade and others.

By Mr. VAN COTT:

Q. I will ask at this point whether any security was filed at the time the order for Receiver was made on 29th September, or 4th or 5th October when the other two complaints were filed by the plaintiffs? A. I know of none, sir. All the papers we could find were brought with me here, and I don't find any here, sir.

By Mr. FULLERTON:

If the Committee will pardon me a moment I will call the attention of the counsel to what has undoubtedly escaped his attention, the approval at the bottom.

By Mr. VAN COTT:

This is taken in connection with the order made on 9th October in the actions appointing Receiver, and directing certain monies to be paid out.

Approved.

JOHN S. SAUZADE, President.
C. N. JOURDAN, Manager.
H. C. FANNING, Secretary.

Exhibit

Q. What is the practice, Mr. Loew, where the security is filed on the granting of an injunction; is it taken away by the plaintiff's attorney to be filed, or is it left with the Judge? A. I have never attended Court in these cases, sir; don't know what is the fact.

Q. Will you state whether there are, among the papers produced, any affidavits, other than those I have read, touching the solvency of the Gold Exchange Bank, filed at the time when either of the orders was made appointing the Receiver—filed on the 9th October, when an order on that day was made? A. The affidavit of Ensign. (The affidavit was ordered in evidence and accepted, and marked Exhibit F.) There are no papers touching the solvency of the defendants when this order of 9th October was made.

Q. We will read another order purporting from this date, 9th October, and filed on 11th October, 1869? A. Yes, sir. (Order offered and accepted in evidence, marked Exhibit G.)

(This was an order granted at Special Term of Supreme Court, on 9th October, by Hon. Albert Cardozo, Justice, wherein Conrad Jourdan is appointed Receiver of the Gold Exchange Bank *ad interem*.)

Q. Are there any orders filed on 4th or 5th October, in the

case of Carver and Lloyd, appointing Receiver? A. Here is an injunction order, and another one in the case of Lloyd, filed on 4th and 5th. (We put in the two orders in the cases of Lloyd and Hamilton, and Benjamin and Watts Carver against the Gold Exchange Bank, appointing a Receiver and granting an injunction. That of Lloyd filed on the 4th, and that of Carver on 5th October, 1869. Accepted in evidence and marked, in the Carver case, Exhibit H, and in the case of Lloyd and Hamilton Exhibit I.)

By Hon. Mr. NILES:

Mr. Van Cott, is it a fact that these other attorneys for the plaintiffs had any connection with Gould and Fisk? A. I can only say, sir, that the original papers in these suits were filed by Field & Shearman. When this last order was entered there appeared to be substitutes, in two instances, in place of the original attorneys.

Q. I ask for the order made entitled in the three actions of 5th November, 1869? A. Order terminating Receivership? Yes, sir.

(It is entitled in the three actions at a Special Term of Supreme Court of 5th November, 1869, before Hon. Albert Cardozo, Justice, &c.)

By Hon. Mr. TILDEN:

Q. What is the date? A. It is entered on 5th November, 1869.

By Hon. Mr. NILES:

Q. In the three suits, what date filed? A. The three suits, November 5.

(On the face of the order, and attached to it, is this statement of the account, the receipts and assets of the Bank: Currency, 119,656 dollars; coin, 41,238 dollars; notes receivable, 31,400 dollars; currency loans due Bank, 50,000 dollars; interest on the same 450 dollars; time loans, 500 dollars; bonds of State of New York, 10,000 dollars; 200 shares of New York Gold Exchange Bank, 10,000 dollars, and various things are enumerated, the value of which is not specified. Packages, boxes, &c., sundry securities supposed to be worthless, a lot of miscellaneous books and certified checks in order.) (Accepted in evidence, and marked Exhibits J, K, L.)

By Hon Mr. NILES:

Q. What is the amount of the currency? A. 119,656 dollars; coin, 31,238 dollars.

By Mr. VAN COTT:

Q. Is there an order entered about the 20th October in this case A. I can't find any other order.

Q. Will you please produce the complaint of Edward K. Willard against the President of New York Stock Exchange and others? A. Here it is, sir.

Q. Will you produce the order for the injunction? A. Can't find it, sir.

(We will produce the complaint in this case. The summons in the action is dated 30th September, 1869. The verification is of the same date. It is an *ex-parte* injunction made by the Justice, but not entered as a Special Term order, and is not on file, for the reason that it was not a Special Term order.)

By Hon. Mr. NILES:

Q. Not filed? A. The complaint itself purports to be filed on 29th October; but that was after the injunction was served.

(The complaint accepted in evidence, and marked Exhibit M.)

We call the attention of the Committee to the fact that, with the exception of the name of the plaintiff, which is written in the complaint, it is a printed complaint.

By Hon. Mr. TILDEN:

Q. Dated 30th day of September? A. The date of the injunction order of the Justice is the 30th September. The order is also a printed order, with the exception of the name of the plaintiff. But we shall require other proof, and will not offer it now.

By Mr. VAN COTT:

Q. Produce all the other complaints and the orders made upon them.

By Hon. Mr. TILDEN:

Q. Put them in the order of their dates? A. Yes, sir.

HENRY N. SMITH against TOWNSEND COX and others.

Q. That summons is dated 27th September, 1869, signed by Field and Shearman, plaintiff's attorneys? A. Filed October 1st, 1869.

By Chairman, Hon. Mr. PRINCE:

Q. What date was the complaint verified? A. The verification was 28th September.

(The verification has the peculiarity of the others, "true of his own knowledge, except to the matters therein stated to be on information and belief." (This states that the plaintiffs are co-partners, and describes the Gold Exchange as a joint stock association for the purchase and sale of gold That Henry N. Smith is a member acting as the representative of the plaintiffs, Henry H. Martin, Jay Gould and James J. Bates. The firm is composed of Smith, Martin, Gould and Bates. (Offered in evidence and accepted, marked Exhibit N.)

We produce from the files three other complaints, one in the case of Walter & Palmer against Townsend Cox and others. (Accepted in evidence, and marked Exhibit O.)

By Mr. TILDEN:

Q. Who is Mr. Palmer? A. He is a broker.

Q. Is he not Cashier or President of Tenth National Bank? A. It is my impression it is stated here he is.

By MEMBER COMMITTEE:

Q. Who are the attorneys? A. Field and Shearman. Barretts and Redfield are substituted in some cases.

Q. The case of Enos against Cox and others. This is of the same general character. Filed when?

A. (By Loew). On the 9th October, 1869. (Accepted in evidence and marked Exhibit P.)

Q. We present another paper from the files entitled under the three first actions of Osborn, Lloyd & Carver. In those three suits an order was made on the 13th of October? A. Filed on the 13th of October.

Q. Discharging Mr. Brown and sureties, attached to them are several papers which we desire to refer to; first, the original order appointing him Receiver; second, a schedule of the assets that came into his hands; third, order of the 9th discharging Brown as Receiver and receipt given by Conrad Jourdan on the 11th October, 1869, as succeeding Receiver, *ad interim* of the assets from Brown, the retiring Receiver. It has the enumeration of the sums already mentioned as paid out, etc.

Mr. Van Cott offers in evidence foregoing paper. (Several documents so united as to form one Exhibit. Accepted in evidence and marked by Chairman Exhibit Q.)

(We are to supplement these papers by other papers which, we can only prove by Mr Field. There is another paper here that ought to be produced, and that is the petition of Mr. Jourdan, Receiver, on which that final order of the 5th of November was made, for it contains a schedule showing what assets came into his hands and what sums he paid out, with the balance in his hands.)

By MEMBER OF COMMITTEE:

Q. Are these all the papers you have brought? A. No, sir; here are others, as follows: Henry N. Smith agst. Geo. N. Bond and others.

By Mr. NILES:

Q. Are there any other papers relating to this Gold Exchange Bank, or the Stock Exchange? A. These papers relate to these actions—Benjamin F. Carver agst. Gold Exchange Bank, date of filing is Oct. 20, 1869; Charles J. Osborne agst. the Gold Exchange Bank, order of adjournment filed on the 5th of October; Henry K. Enos agst. Townsend Cox, consenting to an order dissolving the injunction and discontinuing the action, filed Nov. 9, 1869; Wm. H. Lloyd and others agst. the Gold Exchange Bank, filed Oct. 9, 1869; H. B. Palmer agst. Cox and others, consenting to order dissolving injunction, discontinuing action, filed Nov. 9, 1869; Chas. J. Osborne agst. Gold Exchange Bank, consenting to order for the constitution of H. Smales as plaintiff's Attorney, filed

Oct. 20, 1839; Henry N. Smith agst. Cox, consenting to order dissolving injunction, and discontinuing action, filed Nov. 9, 1869; Edward K. Willard agst. Neilson, consenting to order dissolving injunction, filed Nov. 9, 1869; Chas. J. Osborne agst. The Gold Exchange Bank—an order granting the prayer of the petition of the Receiver, filed Sept. 30, 1869.

By Hon. Mr. NILES:

Q. These are all the papers you find in these suits between these dates? A. All the papers we have found in the office, so far, under the subpœna, in either of said actions, between Sept. 29 and Nov. 15.

By Mr. VAN COTT:

It is suggested that an order made by Judge Clerke on a petition of the 20th Sept. should be put in evidence. We have not the least objection. We now put in evidence the petition of Henry N. Smith and others agst. The Gold Exchange Bank, filed Sept. 30, 1869 (Exhibit R), and the order granting the prayer of the petition of the Receiver (Exhibit S).

We put in the consent to the substitution in the Osborne case, and in the case of Carver, both dated Oct. 8, '69, marked Osborne Exhibit T, and Carver Exhibit U, accepted in evidence.

We put in the consent on the 19th Oct., to substitute still other attorneys in both the cases last named, marked Osborne, Exhibit V, Carver, Exhibit W.

Then we put in the consent in the three cases I have mentioned, the Osborne case, the Lloyd case, and the Carver case, one paper discontinuing action, filed Nov. 9, '69. (Accepted in evidence, marked Exhibit X.)

We put in evidence an order in the Willard case, discontinuing action, dated Nov. 9, '69. (Accepted in evidence, marked Exhibit Y.)

We put in evidence the order in the Smith case of Nov. 9, discontinuing action. (Accepted in evidence, marked Exhibit Z.)

We put in evidence the order in the Palmer case against Cox, Nov. 9, '69, and an order in the Enos case against Cox and others, Nov. 9, '69. Accepted in evidence, marked Exhibit B. 1.)

Q. Will you produce an order of the 20th Oct., directing Jourdan to make certain specific payments to creditors?

Mr. Loew promised to produce the paper to-morrow after further search.

Mr. Van Cott stated the evidence of Mr. Field was necessary, when Mr. Field's representative made satisfactory explanation of his absence to the Committee, with the promise that he should appear in the morning at eleven o'clock.

On motion, the Committee adjourned until eleven o'clock on Wednesday, Feb'y 21st.

RECORD OF EVIDENCE

Taken before the Judiciary Committee of the Assembly of the State of New York, appointed to investigate the charges made by the BAR ASSOCIATION *of New York against* JUDGE CARDOZO, *February 21st*, 1872.

Mr. DUDLY FIELD being duly sworn, testified as follows:

Examined by Mr. VAN COTT:

Q. In September or October, 1869, were you one of the law firm of Field & Shearman? A. Yes, sir.

Q. Will you produce an order in the case of Edward K. Willard against the New York Gold Exchange and others, an injunction order? A. I was subpœnaed yesterday to produce certain papers; this is not among them. I do produce those papers as far as in my possession. I have them now in my possession. Last evening I received another subpœna asking me to produce this particular injunction this morning. I will have it looked up and brought to me here.

Q. Mr. Field will answer whether that is a copy of the order served. Whether he believes it is a true copy? A. I believe it is a true copy. It is my handwriting consenting to the adjournment. (Exhibit C 1).

Q. Will you state the first suit in point of time brought by Field & Shearman, as attorneys against the Gold Exchange Bank, the Gold Exchange, and the Stock Exchange, in September or October, '69, in connection with the gold transactions of 24th September? A. By some fatality you have subpœnaed one of the members of the firm that was absent during the entire period. I left this city for a visit to some friends in Wilkesbarre, on the Tuesday or Wednesday before the Black Friday. I was gone about two weeks, and just came back at the time when the most of those lists were disposed of, and was present at the arrangement which settled three or four cases, the others being subsequently argued.

Q. Which of your partners do you believe will be able to answer the question I put to which you have just responded? A. Mr. Sterling, I have no doubt.

Q. Will Mr. Shearman in whole or in part? A. In part I should think. But Mr. Shearman is not always at tne office in Pine street, where the suits are brought.

Q. Has your firm two places of business in this city? A. No, sir. With this exception, that Mr. Shearman is detailed to tend to certain branches of litigation in connection with the Erie Railway. He occupies the office which the counselor of the Erie Railway occupies—the room of the assistant counsel, 23d street and Eighth avenue. That is not our office. The firm office is on Pine street.

Q. Had Charles I. Osborne been a client of your firm before

you left the city? A. I don' t know, sir. We have a great many clients I never see.

Q. Had Mr. M. Lloyd or Charles I. Hamilton, or either of them been clients? A. Yes, sir. My impression is, for a very long period.

Q. Had Benjamin or Watts Carver been clients before that day? A. I had known Benjamin Carver, and I think I have consulted with him about legal matters, but I cannot fix the precise date; but I have no doubt he has consulted with us before that time. His special counsel is Judge Torrence.

Q. Had you, before that day, ever received a fee from Benjamin or Watts Carver, William H. Lloyd, or Hamilton? A. I think I have from Lloyd and Hamilton. I don't remember about Carver's. My impression is, we had not.

Q. Had Edward K. Willard been a client before time you mentioned? A. I have known Edward K. Willard a number of yeas. He has been a broker, and connected with divers transactions, in regard to which we have had law suits. How far we can regard him as a client, I don't know. We have brought suits for him and defended. Whether before that time or not, I don't know. My impression is, they were.

Q. Had Henry N. Smith been a client of your firm before day mentioned? A. Yes, sir.

Q. The firm of Smith, Gould, Martin &Co.? A. Yes, sir.

Q. Who was the Gould of that firm? A. Jay Gould.

Q. Had Walter B. Palmer been a client of your firm? A. I don't remember. Is it Walter Palmer of the Tenth National Bank? He is a client.

Q. Who is Walter B. Palmer in this suit? A. If it is Walter Palmer, he is the President of the Tenth National Bank.

Q. Did you ever see Walter B. Palmer, who is a plaintiff in one of the suits, at your office? A. I can't tell you, sir.

Q. Was a Walter B. Palmer President of the Tenth National Bank at that date? A. I don't know whether it is B. or not.

Q. There is a Walter B., who was President of the Tenth National Bank at that date? A. Was not then, but is now.

Q. Can you name the Directors of the Tenth National Bank at that time? A. Yes, sir. Bliss, I believe, was President.

Q. Was Mr. Tweed Director, or Mr. Sweeny? A. Not to my knowledge.

Q. Had Henry K. Enos been a client at that time? A. Not to my recollection.

Q. Did you know J. Gould before this time? A. Yes, sir.

Q. Also James Fisk, Junior? A. Yes, sir; known him for a great many years.

Q. Were they both clients of your firm, and had been for years? A. Yes, sir; they had been clients in the way that we had certain suits for them, but they had other counsel.

Q. These litigations, that you have been conducting for years in the Supreme and other Courts, were they not for Gould and Fisk? A. For Gould, no; I don't remember that we had ever any litigations for Gould individually. We examined titles for him, but for Fisk we had suits in almost all the Courts for a long period.

Q. Had you suits in which Fisk and Gould were parties in certain railroad litigations? A. We have had.

Q. Those suits had quite a general notoriety? A. I am not aware of that

Q. They were your clients at the time of this gold panic, both before and after? A. I make the general answer. They were our clients in certain litigations.

Q. At what date did you return to the city from Wilkesbarre? A. My impression is it was the Monday succeeding the Monday following Black Friday. Black Friday was the 24th of September. It was probably the 4th of October.

Then you were here at the time the order of the 9th of October was made, directing Brown, the Receiver, to make certain payments, were yon not? A. Yes, sir,

Q. Who of your firm gave consent to substitute Newell, Denman and Prentice, as attornevs for the plaintiffs, in the suit of Osborne against the Gold Exchange, and Lloyd and Hamilton and Carver against the Gold Exchange Bank? A. We all consented to it. I can't tell who signed it, without seeing the signature.

Q. Were Newell, Denman, and Prentice, attorneys for Fredrick K. Lane at that date? A. They were his partners, I have understood.

Q. That was the firm name under which he did his business, Newell, Denman, and Prentice? A. I don't know. They had his business.

Q. Was not Mr. Lane very closely associated with Fisk and Gould in business transactions and in litigations? A. I never knew of his being associated with them further than that he was the counsellor of the Erie Railway, and also a Director and member of the Executive Committee. How far he was in their business transactions I don't know.

Q. Were they not co-defendants in various suits that you were conducting or defending? A. I think so.

Q. Between your return from Wilkesbarre and the making of this order, the 9th of October, did you see Gould? A. I don't remember to have seen him.

Q. Did you see Fisk? A. Don't think I did. They communicated with us generally by telegraph.

Q. You don't remember whether you saw either of them? A. my impression is, I did not.

Q. Or Lane? A. Yes, sir; I saw Lane once. That is on the day of the settlement.

Q. Did you have any communication from Fisk and Gould in that interval? A. Yes, sir; only by telegraph, except through Lane, as I have referred to.

Q. Did you see either Osborne or Lloyd and Hamilton or the Carvers between your return and the 9th of October? A. I have no doubt I did, sir.

Q. Did you? A. I can't swear positively.

Q. Were either of these parties at your office about these suits between those dates? A. Yes, sir; I think they were between those dates; all of them in fact, I believe.

Q. Will you say that Osborne, before the substitution of Newell, Denmore and Prentice, was consulted about that substitution or authorized or directed you to make it? A. My impression is he did, but I don't know of my own knowledge.

Q. Did Lloyd or Hamilton personally authorize or direct you to substitute Newell, Denman, and Prentice? A. My impression is that Hamilton did in writing.

Q. Did either of the Carvers authorize or direct you to make that substitution? A. I think they did in writing. I think personally, too, but I won't be positive. I see Carver every few days.

Q. Did the communication that you received through Mr. Lane or by telegram from Gould and Fisk have reference to these litigations? A. Yes, sir.

Q. Can you tell me who prepared the complaint in the case of Willard in the three connected suits against the Gold Exchange Bank? A. I can't, because I was away.

Q. Will you tell me in whose handwriting the written matter interlined in addition to the printing of the order is? In this Ex. (C. I.) A. The first writing, until the further order of the Court, is, I believe, in the handwriting of Mr. Sterling, our junior partner. The rest of the handwriting seems familiar, but I can't fix it. The signature to the consent for an adjournment is in my own handwriting.

Q. What is the date? A. October 5th.

By the CHAIRMAN:

A cross-examination is not permitted, but any suggestion for the counsel for Judge Cardoza, we would be glad to hear with regard to any questions that will elicit truth. But no formal examination by Counsel.

By Mr. FULLERTON:

I would suggest to the Committee to ask Mr. Field where these consents for substitution were given, and the circumstances under which they were given.

By the CHAIRMAN:

You can proceed with the questions on that particular point.

By Mr. VAN COTT:

Q. Will the Committee allow me to ask a question? In the complaint of Osborne against the Gold Exchange Bank the name of Charles D. Osborne was written in the title over the name of Benjamin A. Smith, erased. Who was Benjamin A. Smith? A. I don't know, sir.

By Mr. FULLERTON:

Q. Will you be kind enough to state when these consents for substitution were consented to, and the circumstances under which they were given? A. The circumstances were these; when I came back from Wilkesbarre, I found these various suits were in progress. A telegraph ran from the Erie office to some office down town, from which they used to send boys with messages to our office. A message came down, sent either by Fisk or Gould, stating that negotiations had resulted in a settlement of the Gold suits that were in our office, giving us in substance to understand that the Gold Exchange Bank had agreed to pay 15,000 dollars to Mr. Brown as Receiver, 5,000 to his counsel Vanderpoel, 5,000 dollars to Judge Emott, counsel of the Gold Exchange Bank. I think 7,500 to Martin M. Smith, who had something to do with the Gold Exchange Bank, and 5,000 dollars to us. We immediately telegraphed back that we did not approve of any such course, and should not endorse it, and, if insisted upon, we should retire from the suits. Mr. Lane presently came down and begged us to complete this settlement. We positively refused, stating that we objected to throwing the expenses of this litigation against the Gold Exchange Bank. We thought that the Receiver's fees, and the fees of the counsel of the Beceiver, were too high altogether. We would not take one cent for our fees, but looked to our clients. The President of the Gold Exchange Bank, or Vice President, a man I knew well, but my recollection of his appearance or name has departed, came over and told us that it was none of our business, that they had consented. We put ourselves in communication with our various clients, and we did get authorizations either written or verbal, from every one of them. We still refused to do any such thing. Lane came with a check for the money; we refused to take it. After a while it was sugested, I think by Hamilton, there, we had better throw up the suits; we said we would. I am confident every client consented to our substitutions of the substitutes, Newell, Denman and Prentice, and gave up the papers. We received our fees from one of our clients of 5,000 dollars.

By Mr. FULLERTON:

Q. For whom were Barretts and Redfield substituted? (Barretts and Redfield were attorneys for the plaintiff in the suit of Gillespie against Neilson, and in the suit of Lloyd against the Gold Exchange Bank.) A. Barretts and Redfield were substituted and the papers delivered to them. In Carver against the

Gold Exchange Bank, Newell, Denman, and Prentice were substituted.

Q. Were Hamilton and Smith substituted for any of the plaintiffs? A. I don't remember that.

Q. Of whom is the firm of Barretts and Redfield composed? A. William C. Barretts, George Barretts, the present Judge of the Supreme Court, and A. A. Redfield.

Q. Of whom is the firm of Martin and Smith composed? A. William Martin, A. S. Smith, and several junior members.

Q. How long has the firm of Martin and Smith been in business? A. Ever since I have known.

Q It is a highly respectable firm and do a large business? A. Yes, sir.

Q. Also Barretts and Redfield? A. Yes, sir.

Q. Of whom is the firm in which Judge Emott is a partner composed of? A. It consists of himself, Mr. Pomeroy, and Mr. Hammond.

Q. Did you see either of that firm in relation to the settlement? A. I saw Judge Emott, and he insisted upon me consenting to it.

Q. I believe Judge George C. Barretts was a Judge of the Common Pleas? A. Yes, sir; I think at that time he had left the Bench.

Q. This firm of Chapman, Crowell and Scott? A. I don't know anything about them.

Q. You know Mr. Libius Chapman? A. Yes, sir, I know him He was a partner in Titus and Cleveland's.

Q. They were a very eminent firm in this city? A. Yes, sir.

Q. Do you know Mr. Scott, who is connected with that firm? A. I don't know him to speak to. I know a Mr. Scott very well, who is also an organist in Grace Church.

Q. You say that Libie Chapman is a highly respectable lawyer? A. Yes, sir.

Q. Had you any object in retiring from those suits, save what you have named? A. I know we had none.

Q. Did you apply in person in any one of the injunctions of the several suits in your office? A. I did appear in argument for motions to dissolve injunctions. There was an argument before Judge Ingraham at considerable length—Judge Emott on the other side, and my father and myself on the other side. That argument extended for some time, and there was an adjournment, if I recollect aright. The other side relied very much upon a decision of Judge Brady, to the effect that a Stock Exchange was like a social club, and that an injunction could not be got out against them.

Q. Who represented the defendants in these suits? A. F. F. Marbury. He represented a great many stock firms—more than any other in New York.

Q. Judge Emott was a Judge of the Supreme Court of the Second District for eight years? A. The full term.

Q. Do you recollect any one else who represented defendants? A. I don't now.

Q. Can you tell us how many suits altogether were commenced in your office in respect to those transactions, and in what Court they were commenced? A. I don't think I can, because this memorandum was made merely in reference to the papers subpœnaed to produce yesterday. I know there are about twenty-two suits of which I have knowledge, and of which I think something like nine or ten were commenced in our office. The gold injunctions were almost all alike substantially, with the exception of one granted by Judge Brady. There were twelve granted by Judge Cardozo, eight by Judge Clarke, three by Judge Sutherland, one by Judge Barnard, one by Judge Brady, one by Judge McCunn, one by Judge Loew, and one by Judge Calvert.

Q. How many Justices? A. Eight.

Q. Do you know any lawyer in New York who was consulted in regard to the propriety of any one of those transactions? A. I know when an attack was made in the newspapers I asked Judge Bosworth to write on opinion.

Q. Will you be kind enough to read it? (The opinion was read.)

Q. Will you state now if Judge Bosworth has been for many years a Judge of the Superior Court, and what is his standing? A. I have considered him one of the most eminent Judges this city has ever possessed.

(It might be well for the Committee to know that there has never been any degree of intimacy between that firm and the learned Judge, who now stands accused, until 1870, the year following these litigations.)

This matter was objected to by some of the members of the Committee, but after a consultation the question was allowed.

Q. What degree of intimacy, if any, has existed between yourself and your firm and Judge Cardozo. A. There are very few Judges on the bench of the Court of Records in New York that I have not personal relations, and, with many of them, of a social character. But the one I know least, and have had the least to do with, is Judge Cardozo. I never visited his house; he never visited mine. I never shook hands with him except on one occasion, when I congratulated him on being elected to the Common Pleas. I never exchanged a word with him, except to bid him good morning, and I am confident that is the case with all my partners.

By Mr. VAN COTT:

Q. Mr. Field, who was the officer of the Gold Exchange Bank who came to your office and insisted upon your acquiescence in the settlement directed by Gould and Fisk? A. I can't remember his name. He was, I think, the President or the Vice-President. He was the man who had control of affairs at that time.

Q. Was he a native, or foreigner? A. I think a foreigner.

Q. Was his name Sauzade? A. I had seen him two or three times, in connection with this matter, before a settlement was made. I think Jourdan was another. He came there frequently. I think Jourdan did insist.

Q. Was Jourdan at that time an officer of the Bank? A. Don' know. He was believed to be very largely interested in the Bank, in the same position. He followed Mr. Brown, as Receiver.

Q. In the order of the 9th of October the Receiver is ordered to pay five thousand dollars to the plaintiff's attorneys. Who are the plaintiff's attorneys referred to in that order—in the three suits, the order directing the Referee to pay sums of money? A. I suppose Newall, Denman & Prentice.

Q. Brown, Receiver, did not pay that $5,000 to your firm. A. No, sir.

Q. And the five thousand dollars you received was paid you by whom? A. I said it was paid by check. It was from Hamilton or Lane; can't say for certain.

Q. The five thousand dollars paid in those suits were paid either by Hamilton or Lane? A. It is my impression.

Q. Is Hamilton one of the brokers of Gould and Fisk? A. I don't know, sir.

Q. In what suit did the argument take place to which you refer? A. I think it was the Gillespie suit.

Q. In what Court was that? A. Judge Ingraham.

Q. You spoke of the strongest order made by Judge Brady; in what suit was that made? A. I have forgotten.

Q. Was it made before or after the injunction of the 29th September, and the Receivership order of that day? A. My impression is it was after that day.

Q. Was it before or after the 9th of October? A. My impression is it was before; I won't be positive.

Q. In what respect was it stronger than the injunction of the Supreme Court, which prohibited the Bank from exercising any of its functions? A. In the printed letter which I have referred to, is the examination of the cases; that letter was the product of that examination; I know it was stronger because they said so.

Q. Was that against the Gold Bank or Gold and Stock Exchange? A. Don't remember that.

Q. Can you state any reason why you needed any injunction stronger or weaker against the Gold Exchange Bank after the Receivership granted by Judge Cardozo? A. My impression is we did not need an injunction and did not get an injunction; it was gotten by another firm.

Q. Was it against the Bank? A. I don't remember.

Q. Did any other Judge order a Receiver upon the complaint, upon information stating the insolvency, upon information and

belief, but not proving the fact of insolvency positively by affidavit? A. I don't know whether there was more than one Receivership. I have no knowledge of more than one and the substitution of Jourdan for Brown in the Receivership. I don't remember in those gold cases of anybody appointing Receivers except Judge Cardozo.

Q. Can you explain to me why, after the Receivership was ordered on the 29th of September in the case of Osborne, your firm procured a Receiver in the two cases of Loyd and Hamilton, and Carver against the Gold Exchange Bank? A. I don't remember that we did.

Q. In your whole experience as a lawyer, have you ever known, except in these gold cases, where a corporation was put in the hands of a Receiver, on the ground of insolvency, other Receivers were appointed by the Court against such corporation? Please mention a single case in your whole experience as a lawyer? A. I have known repeated cases where the same Receiver has been appointed over and over again in different actions, on the ground of insolvency. I don't now recollect a case where different Receivers were appointed in different suits on the same ground.

By Hon. Mr. NILES:

Q. Do you mean now, in cases of corporations? A. Yes, sir. I see now it is highly improbable that that argument was in the Gillespie case. The argument before Judge Ingraham It was Judge Brady's injunction, obtained by Barretts and Redfield. I think it was the Willard case. I now remember that the Gillespie case was repeatededly postponed. Judge Barrett was for the plaintiff, and Mr. Mayberry for the defendant.

Q. Was the Gold Exchange Bank a party to the action in the Willard case? A. No, sir.

Q. There was no injunction against the Gold Exchange Bank in that case? A. No, sir.

Q. Was the Gold Exchange Bank a party to any of that series of actions in which injunctions were got against the Stock Exchange and the Gold Exchange, restraining the Exchanges from buying and selling gold and from expelling members? A. My impression is those Gold Exchange Bank suits were all brought while I was away.

Q. My question was in the actions against the Gold Exchange and the Stock Exchange, in which injunctions were obtained against the Gold and Stock Exchange, restraining them from buying and selling gold from the plaintiffs or other parties, and from expelling members, was the Gold Exchange Bank a party? A. I cannot tell without examining papers. My impression is, they were parties.

Q. Won't you please turn to any one of these papers before you (Exhibits). I speak now of the actions against the Ex-

changes. A. The Bank does not appear to be defendant in any of the papers before me.

Q. You stated that it was the very groundwork for an injunction in those cases, that the Gold Exchange and Stock Exchange had no right to arbitrate without the consent of the members to arbitrate. Will you turn to those papers and show me where that is the ground stated for an injunction? A. In the Willard case the injunction is asked for, "from declaring any member at fault by reason of failure to perform his contract, and from suspending and expelling any member, or interfering with the full exercise of his privileges, and from the interference of any of the said directors then in any court of public justice." I will cite the case of Willard *agst.* Neilson, and will refer you to the entire complaint.

Q. Read the part which you think so states.

Mr. Field read the second clause and the tenth subdivision and the eleventh secion of the by-laws and rules of the Gold Exchange.

Q. I will ask you to answer explicitly, whether any plaintiff, in any suit against these Exchanges, in which injunctions were obtained, stated in his complaint, in substance, the fact that he had objected to the arbitration, under the rules of those Exchanges, in respect to any of the gold transactions in question? A. I cannot tell you.

Q. Will you produce, at the next session of this Committee, one of the complaints in which that is stated? A. Yes, sir.

Q. Did Judge Bosworth express the opinion that, as between members of the Stock Exchange and of the Gold Exchange, whose rules and by-laws provided for arbitration, there could not be a valid arbitration in the absence of an objection by a member to the arbitration? A. Not that I am aware of.

Mr. CHARLES E. LOEW was recalled for the prosecution and examination by Mr. Van Cott, who testified as follows:

Q. Did you make any further search for the order of the 20th of October? A. I did sir. I found a petition for leave to make payments, and an order to the Receiver authorizing him to make payments. (Offered in evidence, and marked Exhibit D 1 and E 1.)

Mr. Van Cott read the order for the 20th October, '69. In the matter of the petition of Conrad N. Jourdan, Receiver of the property, etc., of the Gold Exchange Bank.

By Mr. TILDEN:

Q. It refers to the three suits in which Jourdan was appointed Receiver? A. Yes, sir.

By Mr. VAN COTT:

The Committee will please note that this petition was presented the eleventh day after Mr. Jourdan was appointed Receiver, signed by the Receiver and verified.

By Mr. OWEN:

Q. Who were the attorneys in that case? A. Chapman, Scott, Crowell.

By Mr. VAN COTT:

We have called for other papers from the County Clerk's office which I suppose are produced to-day, but they are not in connection with the charge which we have presented so far, and cannot be presented now without entirely changing the proper order of investigation. But I would respectfully suggest to the Committee that Mr. Loew turn over to their custody the other papers produced this morning, so that we may look at them from time to time in the order of the investigation.

By the Chairman, the Hon. Mr. PRINCE:

Q. Are all the papers that are on the files of the County Clerk's office here, between these dates? A. I have brought all the papers.

By Mr. VAN COTT:

Yesterday inquiries were made for undertakings in the three suits in which the Receiver was appointed. They are now produced. I produce the undertaking in the Osborne case against the Gold Exchange Bank, and offered in evidence and marked Exhibit F, 1. It was filed on the 29th of September, '69, and approved by Judge Cardozo with his initials endorsed, on the same day.

This undertaking is executed by the plaintiff, Frederick A. Lane, and Henry H. Martin, in the case of Osborne against the Gold Exchange Bank on the injunction.

The undertaking in the Carver case is executed by Thomas Martin; the amount is only $1,000, Exhibit G, 1.

The injunction in the case of Lloyd, is executed by Frederick A. Lane and C. J. Hamlin, in the sum of $1,000, marked Exhibit H, 1.

In the case of Henry N. Smith, against Gold Exchange and other parties, dated 28th Sept., '69, executed by George White, Frederick A. Lane, in the sum of $5,000, marked Exhibit I, 1.

In the case of Palmer against Townsend Cox and others, executed by Palmer, Henry N. Smith, John D. Prince, in the sum of $5,000, marked Exhibit K, 1.

The case of Willard against Neilson and others, undertaking dated 30th September, filed 30th September, and executed by Willard, Frederick A. Lane, and J. Gould, in the sum of $10,000, marked Exhibit L, 1.

In the case of Enos against Cox, Gold Exchange, and others, executed by Frederick A. Lane, E. J. Hawlin, in $1,000, dated October 4, and filed October 4, 1869, marked Exhibit M 1.

We have here, I suggest to the Committee, the undertaking of Mr. Brown, Receiver, who, as the papers show, was discharged on his paying over the balance in his hands to his successor. We have no objection to putting them in, but we do not see their materiality.

By Judge FULLERTON :

I think the substitution had better go in.

By Mr. VAN COTT :

Then we will put in the substitution in the case of Lloyd.

First, the substitution of Barretts & Redfield, 8th October, 1869, marked Exhibit N 1.

In the case against the Gold Exchange Bank, in which substitution was of Smales for Newell, Denman & Prentice, on the 19th October, 1869, marked Exhibit O 1.

In the case of Lloyd against the Gold Exchange Bank.

By Judge FULLERTON :

Here are papers of Henry N. Smith against George Bond, where an injunction was granted by Judge Clerke in these same series of suits.

By Mr. VAN COTT :

We don't put them in.

Lispendens, of the 5th of October, if the Committee will please take notice of that, and of its order, to be put in in the order of the proofs in the case when we come to that.

Q. Won't you refer to that, Mr. Loew, in this case ? A. This is the first, I think.

By the CHAIRMAN :

Q. On what charge is that ?

By Mr. VAN COTT :

A. The charge made in the estate of Bowne, signed by the plaintiff's attorney, Jas. C. Hayes, against the Trustees.

"In the Supreme Court, Elizabeth Rodman Bowne against John Leveridge, Harmanus B. Duryea, Executors of the last Will and Testament of Wm. Bowne, Trustees, and other parties." The notice states the object of the suit, describes a large amount of real estate which is affected by the suit. Signed by James C. Hayes, plaintiff's attorney, and dated the 26th August, 1869. Appended to it is a notice requiring the Clerk to record this *lis pendens*. Signed by the same Attorney, and filed and recorded August 26, 1869, 2 hours, 13 minutes. Another amended notice, filed in the same action, dated the 2d of September, and filed by the same attorney. Filed and Recorded the 2d December, 1870, 2 hours and 5 minutes.

By Judge FULLERTON :

Q. Have you produced any other papers from the Clerk's office relating to actions commenced in October, 1869, with respect to the gold transactions ? A. I have no other papers except these relating to the gold transactions with me, sir. I expect others up here.

CHARLES J. OSBORNE, being called for the prosecution, and being duly sworn, testified as follows :

Examined by Mr. VAN COTT :

Q. Was you, in September or October of 1869, in the business of a broker in this city ? A. Yes, sir.

Q. Were you acquainted with the firm of Smith, Gould & Martin ? A. I was, sir.

Q. Was J. Gould a member of that firm ? A. Yes, sir.

Q. Did you act as broker for the firm or for Mr. Gould individually, or for Mr. Gould and Mr. Fisk in any gold transactions in September, '69 ? A. No, sir.

Q. Did you for the firm of Willard & Co ? A. Yes, sir.

Q. Purchasing gold for Willard & Co ? A. Yes, sir.

Q. Carrying gold and loaning gold for Willard ? A. Yes, sir.

Q. What was the amount of these transactions down to and including the twenty-fourth of September, 1869, of the purchases ? A. Between three and four millions. That is the gold I was carrying. I did not purchase it all.

Q. Was there a sudden fall on the 24th September, in the price of gold ? A. Yes, sir.

Q. From what to what figures ? A. From 62 to about 32½ or 3, I think.

Q. In what space of time did that fall happen ? A. I don't think it took more than 20 minutes or half an hour.

Q. Your purchases on the 24th September and other purchases were all made at the Gold Exchange, were they not ? A. Yes, sir.

Q. What was the date of the rise in gold, say from about 33 up to the highest figures you have mentioned ? A. I could not tell you that ; I was away when it started. I don't know when the gold began to rise. I think it was some ten or fifteen days.

Q. Were Willard & Co. brokers for Smith, Gould, Martin & Co ? A. I should suppose so. I don't know their business.

Q. What was the state of your account with Willard & Co., in these gold transactions at the close of the 14th September ? A. That is more than I could tell you, sir.

Q. What was the state of your account with the Gold Exchange Bank, on the 29th of September ? A. I can't give you any facts and dates together.

Q. Do you remember when you received the last payment, say between the 24th of September and the middle of October, from the Gold Exchange Bank, directly or indirectly,

and the amount? A. I can't give you the exact amount. The Gold Exchange Bank paid the other check for a certain amount of money.

Q. Some $50,000? A. I think rather more than that.

Q. How much do you think it was? A. I can't remember now. I was under the impression it was near 90,000 dollars.

Q. It was one check? A. Yes, sir.

Q. Where did you receive that check? A. I received it in payment for the balance of my account.

Q. Did you receive it before 29th September? A. I could not say, sir.

Q. Did you receive it before you executed an undertaking in your suit against the Gold Exchange Bank? A. Yes, sir, before that time.

Q. You deposited it in the Corn Exchange Bank? A. Yes, sir.

Q. It did not come back? A. It was not paid.

Q. Did it come back to you? A. My Bank only credited me with a per centage of it. The Gold Exchange Bank could not make their clearances with the Clearing House.

Q. Will you say that your check was not collected on the regular day in the order of the clearances of your own knowledge? A. Of my own knowledge, it was not credited.

Q. Did you not finally receive the money? A. I did afterward, after it was in the hands of the Receiver.

Q. Did you not receive, in shape of credit in your own Bank, the balance of the check? A. Yes, sir.

Q. So you never received anything from the Gold Exchange Bank on that check from the date it was given directly, and whatever you received was in the shape of a credit through your own Bank? A. I did, as near as I can remember.

Q. Can you state when that Bank received the money? A. I think in two or three days.

Q. Two or three days after you had deposited it? A. Yes, sir.

Q. You deposited it on the day you received it? A. I did.

Q. As near as you can state, what was the day on which you received it; it was Monday, was it not? A. I could not say.

Q. Will you be able to state to the Committee hereafter, as you think, on what day you received that check deposited? A. I think I will be able to.

Q. You think within three days afterward you had full credit for it? A As near as I can remember.

Q. Was there any account open between you and the Gold Exchange Bank. I understood you to say that check included the balance of indebtedness of the Bank to you? A. I think it closed the transaction, but I am not positive.

Q. Was there any controversy in your suit in the gold litiga-

tion between you and the Bank after you received that credit—anything to litigate about? Certainly, there was the balance of my check to litigate about.

Q. If you received the whole credit in your own Bank was there anything left for you to litigate about in the Gold Exchange Bank suit? A. I could not remember what it was.

Q. That suit was discontinued, was it not? A. I think I discontinued my suit.

Q. Was there anything open between you and the Gold Exchange Bank, on the 9th of October, or on the 20th of October, or on the 5th of November, any controversy open and pending between you on either of those dates? A. I don't remember whether there was or not.

Q. Who furnished you with the sureties when you got the injunction against the Gold Exchange Bank? Who procured your sureties in the undertaking given on that injunction? A. I suppose I procured them myself. I have no remembrance of it.

Q. Do you remember applying to anybody to be your security, or applying to some one to have security provided for you? Henry H. Martin was one of the firm of Smith, Gould, Martin & Co. Did you apply to Frederick A. Lane to be one of your sureties, or did he get Mr. Lane for your surety? A. I think I applied to Mr. Lane.

Q. Will you state positively? A. Can't say positively.

Q. How long had Field & Shearman been your attorneys before 28th of September, 1869? A. I think that was the first time they ever were my attorneys.

Q. Who introduced you to them then? A. I think I called on my own accord, without any introduction.

Q. Without any suggestion by anybody did you call upon them? A. I think not.

Q. You think Mr. Smith did not suggest it, or Mr. Martin, or Mr. J. Gould, or Mr. Fisk, or anybody? A. No.

Q. Don't you know who suggested your calling on them? A. No, sir; I don't think anybody did.

Q. Did you call upon them after you received the credit at your Bank of the whole of that check? A. Oh, yes.

Q. About that suit? A. I think so; about the same thing.

Q. When? A. I remember seeing Mr. Field, but can't remember when.

Q. Will you state if you called upon them about that suit after you received from the Bank the credit of the whole balance due you? A. I don't know, sir. Don't remember what I called for.

Q. Do you remember anything you directed them to do? A. No.

Q. Do you know the firm of Newell, Denman & Prentice, lawyers? A. Yes, sir.

Q. Have they ever done any business for you? A. I think this suit was transferred over to them.

Q. Have they done any other business for you? A. No, sir.

Q. Did you see any of the members of that firm about the suit? A. I think one of them entered my office; I am not very certain.

Q. Had you grown tired of Field & Shearman, and of your own motion caused them to be substituted? A. No, sir; I did not get tired.

Q. Who suggested them to you and to make that change? A. I rather think it was at their own suggestion.

Q. Was it before or after you received this credit of the whole of the check in your Bank? A. I could not say.

Q. Did you see Field & Shearman about making the transfer? A. Yes, sir.

Q. Did they advise it? A. I think Mr. Field advised it, if I am not very much mistaken—either Mr. Field or Mr. Shearman.

Q. How much money did you pay to this firm, to Newell, Denman and Prentice for their services in that suit? A. I don't remember, sir.

Q. Do you remember paying them anything? A. I paid a check for this suit; who I paid it to I don't remember at all.

Q. Did you pay it before or after the transfer to them? A. I think it was paid afterwards.

Q. For what amount? A. A very large amount; could not say how much.

Q. Do you think it was paid to Field & Shearman or to them? A. I am not positive.

Q. You have that check? A. I have it unless it is destroyed.

Q. Your cash book will show it? A. If not destroyed. They are three years old, and there is no use keeping them.

Q. From whom did you receive the money that you paid to either of those persons? A. I received it from myself.

Q. You think nobody indemnified you for the expenses in that suit? A. I think I charged it to my customers.

Q. You think you charged it to Willard & Co? A. I think I charged it *pro rata*.

Q. Did you charge Willard & Co. with any part of it? A. I think so, sir.

Q. Did not Willard & Co. pay the whole sum of $5,000 to Field & Shearman? A. No, sir; I paid whatever money was paid to Field & Shearman, or to Newell, Denman & Prentice; it was near $5,000, if not fully.

Q. You received it from them, or from them and others? A. Yes, sir.

Q. Can you say what others? A. No.

Q. I want either you shall say you received the rest of it, or say that you cannot? A. I cannot say of whom I received it all. Possibly I might have received it all from Willard & Co.

Q. Will you please mention everybody from whom you think you received any part of it? A. I don't think I received a check at all. The check was charged to some account or other.

Q. Then you don't know who reimbursed you for what you paid in the suit, except the part you received from Willard & Co.? A. No, sir.

Q. You are not able to specify what amount you received from Willard & Co.? A. No, sir.

By Hon. Mr. NILES:

Q. Did any one go with you to Field & Shearman's office the first time you went there on this business? A. I don't think anybody.

Q. Did you meet anybody there connected with these transactions? A. No, sir.

By Hon. Mr. FLAMMER:

Q. Had you any regular attorney before you went to Mr. Field? A. No, sir.

Q. Before you paid the 5,000 dollars, did you consult with these other persons who you say contributed? A. Yes, sir.

Q. With whom did you consult? A. Mr. Willard.

Q. Anybody else? A. My partner.

By the CHAIRMAN:

Q. Any other parties who were to contribute? A. I don't remember whether I did or not.

By Hon. Mr. HAYS:

Q. What was that consultation about at that time? A. About the amount of money that was due me from the Bank. I was in the Bank a night or two previous, and did not like the looks of affairs at all. It was a considerable amount of money due me.

By Hon. Mr. STRAHAN:

Q. At the time you paid the check? A. I think it was all over at that time.

Q. Had this consultation you spoke of reference to the balance of the check due you at the Gold Exchange? A. Yes, sir.

Q. Had no reference to the check you paid to Field & Shearman? A. No, sir.

By Hon. Mr. HAYES:

Q. You say you had a conversation with Willard and others in relation to a check you paid to the counsel? A. No, sir. I was thinking about the other check.

By Mr. VAN COTT:

Q. Were you examined before the Congressional Committee on the gold panic? A. I was, sir.

Q. Was this question asked you (page 115): Q. "Did you, on or a[illegible]out the 28th of September, bring a suit against the Gold

Exchange Bank?" A. "I merely applied for an injunction to put it in the hands of a Receiver."

Q. "Who was your counsel?" A. "Mr. Lane."

Q. Were you asked those questions by this Committee, and did you make those answers? A. Very likely I did.

Q If you did, was that the truth? A. Whatever I said was the truth.

(His affidavit says: "I am informed by some of the officers of the defendants," etc.)

(The fifth paragraph of his affidavit, attached to the complaint in the case of Osborne against the Gold Exchange Bank is read to the witness. He is asked: "Who were the officers of the defendants that made you the statement in that transaction?")

A. I did have some such conversation with one of the officers of the Bank.

Q. Who were the officers? A. I cannot tell you; a good many of them; we had a great deal of talk at that time, between the transactions, but I do not know where it was.

Q. Was it more than one? A. I do not know.

Q. Can you tell who Benjamin N. Smith is?

(Exhibit A, February 20, called for from the Committee.)

Q. Will you tell me who Benjamin A., or E., Smith, Jr., is, whose name is erased here, and your name substituted? A. No, sir; I do not know who he is. I know a Ben Smith.

Q. Who is Ben Smith? A. He is a partner of William M. Parks & Co.

Q. Also a broker? A. Yes, sir; a gold broker.

Q. Is he not a relation of Henry N. Smith? A. No, sir.

Q. Is he the broker of that firm? A. I do not know that he is.

Q. When you applied to Mr. Willard for the advice about the check of the Gold Exchange Bank, what answer did he make? A. I do not know, sir, what answer he made.

Q. Don't know to whom he referred you? A. No, sir; I can't remember about it.

Q. You say you don't remember anything that Willard said to you? A. No, sir.

By Mr. FULLERTON:

Q. When did you receive the balance of that check from the Bank? A. Some few days after the first part was paid.

Q. When was the first part paid? A. The first part was paid through the Clearing House the following day after I deposited the check.

Q. Can you tell within how many days the balance was paid? A. I can't.

Q Have you any acquaintance with Judge Cardozo? A. Never saw him before in my life.

Q. Your suit was commenced in good faith to recover your debts, was it not? A. Yes, sir.

Q. When you say that probably—in the testimony before the Congressional Investigating Committee—that Mr. Lane was your attorney, did you mean anything more than that he was substituted after Field and Shearman gave it up? A. Mr. Lane was mixed up with it in some way; I think he advised with me once or twice, but am not positive.

Q. You understood him to be one of the members of the firm substituted in the place of Field and Shearman? A. Yes, sir.

EDWARD K. WILLARD was called, and duly sworn, and testified as follows:

Examined by Mr. PARSONS:

Q. On the ninth of September, 1869, what was your business. and what was your firm? A. A stock-broker; E. K. Willard & Co.

Q. Did you, as stock-broker, or your firm, during that portion of September which preceded the 24th, have large transactions in gold? A. Yes, sir.

Q. In respect to any such transactions, did your firm act for the firm of Smith, Gould, Martin & Co? A. Yes, sir

Q. In reference to any such transactions, did you operate through the firm of Charles J. Osborne & Co., or Osborne & Cammac? A. I think they had some business with me; yes sir.

Q. What amount of gold was being carried for Smith, Gould, Martin & Co; you acted for them on the 24th Sept., 1869? A. They were carrying gold for us.

Q. I mean carrying gold for you, which you were carrying for Smith, Gould, Martin & Co? A. They were carrying several millions of gold.

Q. How much of that money was your firm carrying for Smith, Gould, Martin & Co? A. I can't remember the amount.

Q. Was the amount about three millions of dollars? A. I think it was more than that.

Q. Eight or nine millions of dollars? A. I think very likely.

Q. State your best recollection about the amount? A. I think I had at one time, six, seven or eight millions.

Q. Is it possible that the amount may have been larger than that? A. It may have been.

Q. Can you be quite sure that your firm were not carrying about that time, immediately preceding the 24th Sept., twenty-five millions, for Smith, Gould, Martin & Co? A. Not as much as that.

Q. Quite sure it was not about fifteen millions of dollars? A. I don't think it ran over ten or twelve; it changed from day to day.

Q. Was that about the amount your firm was carrying for

them on the 24th Sept., 1869? A. I don't remember on that day, it must have been somewhere about that amount.

Q. Do you remember the commencement of a suit in the name of Charles J. Osborne, and an application for the appointing of a Receiver in an injunction suit brought against the Gold Exchange Bank? A. Remember hearing of such a suit, but don't know anything about it.

Q. Prior to the commencement of that suit, was there any conversation between Osborne and yourself about it? A. I don't remember.

Q. Do you remember Mr. Osborne asking you what he should do with respect to the Gold Exchange Bank? A. No, sir.

Q. Do you remember having a conversation with him on the subject? A. No, I don't.

Q. Were you acquainted, prior to September, 1869, with Frederick A. Lane? A. Yes, sir.

Q. How long, prior to that time, had you known him? A. I don't know.

Q. Considerable time? Several years? A. Don't think I had known him more than a year or two.

Q. Had you known him as associated in transactions with Jay Gould, J. Fisk, Jr., in any kind of transactions? A. No transactions at all.

Q. Did you see Mr. Lane during the few days preceding Sept. 28, 1869? A. Yes; I presume I saw him frequently.

Q. Did you have any conversation with him in respect to the gold which your firm was carrying for Smith, Gould, Martin & Co.? A. Not that I recollect.

Q. State whether you did have any conversation with him on the subject? A. Don't think I did.

Q. Did you have any conversation with him in reference to the commencement of the suit, and the application for an injunction and the appointing of a Receiver of the Gold Exchange Bank? A. Not that I remember.

Q. Where did you meet Mr. Lane during the few days preceding September 28, 1869? A. Don't know, sir.

Q. Did you go to his office? A. Did not know he had any.

Q. Were you at the office of Messrs. Field & Shearman during those few days? A. I think I was.

Q. On what business did you go there? I only ask for the period of time embracing the 29th of September, 1869? A. I think I went there in reference to the suit I commenced.

Q. Commenced against whom? A. The suit for an injunction against the Stock Exchange.

Q. Was that the only matter about which you called on Messrs. Field & Shearman during those few days? A. I could not say positively.

Q. Did you see them in reference to the gold that was being

carried by your firm for Smith, Gould, Martin & Co.? A. It was in reference to my own business.

Q. What was the business on which you saw them? A. It was business which grew out of the panic on what was called Black Friday.

Q. Was the transaction in reference to which you saw them, the gold which was being carried by your firm? A. I presume it was in reference to that suit, and with reference to the gold I was carrying.

Q. Will you state whether you did not suggest to Mr. Osborne the commencement of that suit, and the application for the appointing of a Receiver, and an injunction against the Gold Exchange Bank? A. Not that I remember. I don't think I said anything on that.

Q. Did you speak with Mr. Lane on that subject? A. Not that I remember.

Q. Do you remember Mr. Lane being in your office during the few days preceding the commencement of your suit? A. I do not.

Q. Had you known James Fisk, Jr., for sometime prior to September, 1869? A. Yes, sir.

Q. How long have you been acquainted with him? A. For a couple of years.

Q. Was your firm carrying gold for him? A. No, sir.

Q. Were you carrying any gold for Mr. Gould individually, during that time. A. No, I don't think we did. I may have done.

Q. Do you know Benjamin E. Smith? A. I may know of him. Know of his name.

Q. Do you Wm. M. Parks personally? A. Yes, sir.

Q. What connection is there between him and Smith, Gould, Martin & Co.? A. don't know.

Q. Is he connected as broker with that firm, so far as you know, or with any of the members of it? A. I don't know.

Q. Did you not see Mr. Frederick A. Lane at the office of Smith, Gould, Martin & Co., during the few days preceding September 9, 1869? A. I think I may have done so.

Q. Were you in the habit of calling there frequently? A. Yes, sir.

Q. Did you, in any of these conversations, talk of the gold that was being carried for that firm? A. I may have done—I don't remember.

Q. Who made the suggestion for the commencement of your suit? A. don't know.

Q. Was it not Mr. Lane? A. I don't know.

Q. Did you see either Mr. Fisk or Mr. Gould during those days? A. Yes, sir.

Q. Did you not always have conversations with them with reference to this matter? A. I may have done so.

Q. Did you meet them together or with Mr. Lane during that period? A. May have seen them in the same office.

Q. Do you not recall a conversation in reference to this matter when each of these gentlemen was present? A. I don't know of any.

Q. When Mr. Gould and Mr. Lane were present? A. I don't know.

Q. Do you remember the commencement of your suit? A. I remember that it was commenced; have no particular recollection about the commencement of it.

Q. Do you remember against whom it was brought? A. Against the Stock Exchange and Gold Exchange.

Q. Do you remember whether it was against the Gold Exchange Bank or not? A. I think not.

Q. Have you any recollection that an undertaking was given at the commencement of this suit? A. No.

Q. Did you ever sign such an undertaking? A. No, sir.

Q. Will you look at the undertaking produced (marked L J), and state whether that was not signed by yourself; also by Frederick A. Lane and Jay Gould? A. I should say this was Mr. Gould's writing. Mr. Lane's I am not familiar with.

Q. Can you state when that undertaking was signed? A. No, sir.

Q. Do you mean to state you have no recollection at all about that undertaking? A. I have no recollection.

Q. Have you no recollection at all about the commencement of your suit? A. Not particular. I might rake up some information.

Q. Who gave the information upon which this suit was commenced? A. I suppose I gave some of it.

Q. Don't you know of anybody else? A. I don't.

Q. Whose names appear as the attorneys of your firm in that suit? A. I think Field & Shearman.

Q. Do you recall seeing either member of the firm in connection with your suit? A. I must have seen one of them. I think Mr. Shearman.

Q. Do you recollect seeing him? A. Yes, I think I did.

Q. On more than one occasion? A. I don't know.

Q. Did you, on this occasion, sign the affidavit to the complaint? A. I don't remember distinctly.

Q. Where was it that you saw Mr. Shearman on this occasion? A. I think it was at the Erie office.

Q. Who else were present? I don't remember.

Q. Was Mr. Lane? A. I did not see him.

Q. Do you remember how you happened to go there? A. I went there in the usual course of business.

Q. Was any appointment ever made for you to go there? A. Not that I remember.

By Judge FULLERTON:

Q. Do you know Judge Cardozo? A. No, sir.
Q. You have seen him? A. Yes, on the bench.
Q. But you are not acquainted with him? A. No, sir.

By MEMBER OF COMMITTEE:

Q. Did you and Osborne contribute for paying the counsel in these actions against the Gold Exchange Bank? A. No, sir.
Q. Did you contribute at any time to pay $5,000 to one of the counsel? A. No, sir.
Q. Did your firm? A. No, sir.
Q. Did any parties whom you represented? A. Not that I remember.
Q. Did you consider Smith, Gould, Martin & Co. entirely responsible for any loss upon gold of your carrying for them? A. Indeed, I did.
Q. So that you or your house were involved in no difficulty by reason of these gold transactions which you were carrying on with Smith, Gould & Martin? A. No; I was involved in no difficulty.
Q. So that if you had chosen to sell out the gold and the margins, could you not have settled the transactions? A. We did.
Q. Then you were in no danger of being expelled from the Gold or Stock Exchange? A. Not unless they had forced the deliveries contrary to the contracts.
Q. But you were prepared to carry out your contracts? A. Yes, through the Gold Exchange.
Q. Did the majority of either Stock or Gold Exchange threaten or intend to expel anybody by reason of their failure to make deliveries under the contracts, where the default was simply with the Gold Exchange Bank? A. They threatened to sell out our gold.
Q. (Repeated). A. That would be the result if they sold out our gold,
Q. (Repeated). A. Why of course we lived under that fear from the time we signed the constitution.
Q. Now then, if they had sold your gold, it would have brought the market price at that time, would it not? A. Very doubtful.
Q. Was not all taken at 32½ that was sold? A. I suppose they had some amounts.
Q. Did not all the amounts sold bring that price? A. That was because a very small amount was sold—if a large amount had been thrown on the market, the result would have been different.
Q. So far as it was offered, were there buyers at 32½? A. I don't remember.
Q. At the price to which it fell that day? A. I don't remember what that price was.
Q. Were there buyers at the lowest price on the evening of

September 24 for all the gold offered at that price? A. I don't know; the quotations will show that.

Q. So far as you know were there? A. I don't know whether there were buyers—there was a quotation. The lowest price on the afternoon or evening of the 24th was as low as the price at which the gold had been purchased of—in the early part of September. The price had been higher, I fancy, during the month.

By JUDGE FULLERTON:

Q. Suppose you had been sold out under the rule, what would have been the consequence. A. I don't know.

Q. Were dealers in gold able to make their deliveries on the 24th, or after it for some days? A. No; not as a rule; the Gold Exchange suspended for a few days.

Q. When a person is sold out under the rule what is the consequence? A. They cannot pay their debts.

Q. Was the gold threatened to be sold, gold to be received or delivered by them? A. I don't know of any case of threatening in regard to gold where I was involved; they did not threaten.

Q. You stated on your examination that threats were made to sell you out? A. No, sir; they don't do business in that way.

Q. Was there no notice given you, or intimation received by your firm of an intention to sell out? A. No, sir; no threats.

Q. Was there any gold, in respect to which there was any right to sell it out according to the rules existing or adopted, immediately prior to the commencement of your suit? A. Yes; all the gold I had received could be, if they had gone on with that plan of proceeding.

Q. Was the gold, which could be sold out, gold to be received by your firm? A. Yes.

Q. On contract from whom was that gold to be received? A. Messrs. Smith, Gould, Martin & Co.

Q. And for others also? A. Yes.

By Mr. NILES:

Q. Was not the sole purpose of suspending these sales of gold under the rules, to compel the fixing of some price at which sales could be made? A. No, sir, I fancy not; because that action was taken by the Gold Exchange.

Q. Was not the sole purpose of suspending the action of the Gold Exchange under its rules, thus preventing it from going on and taking other business according to their rules and selling the gold of people who did not come and make their deliveries—was not that for the sole purpose of compelling settlements? A. Not that I am aware of, I have never heard anything of the kind.

Q. Had you or your firm received any intimation prior to the commencement of your suit of any intention on the part of any person to take any proceedings against your firm? A. No, sir.

Q. Had any such intimation been expressed? A. No.

Q. Was there any intimation avowed or expressed, and is

that the reason for the commencement of your action? A. Yes, sir.

Q. You made these contracts with members of the Gold Exchange? A. Yes. The Stock Exchange had avowed their intention of taking cognizance of the matter.

HIRAM C. ROGERS, being duly sworn by the Chairman of the Committee, and examined by Mr. Parsons, testified as follows:

Q. Mr. Rogers, in September, 1869, were you connected with the New York Gold Exchange Bank, and if so, in what capacity? A. Yes, assistant cashier.

Q. Do you know Charles J. Osborne, or did you at that time? A. Yes.

Q. Had his firm, prior to September 24, 1869, had large transactions in gold through the bank? A. Yes.

Q. And were there large transactions of the firm pending on the 24th of September, (Black Friday)? A. There were.

Q. Do you know what was the balance due his firm on the transactions which were pending at that time? A. About $60,000.

Q. How was that amount paid to Osborne's firm, and when? A. It was paid by a check, I think, on Monday succeeding Friday, 24th of September.

Q. Would that be the 27th? A. I should think so.

Q. Was your check paid? A, Yes, sir.

Q. Deposited by Mr. Osborne's firm in their bank? A. Yes, and paid regularly through the Clearing House.

Q. In several amounts, or all at one time? A. All at one time for the full amount.

Q. On what day? A. Tuesday morning, Sept. 28, provided I am right as to dates.

Q. You have not the check with you? A. No, sir.

Q. When did the check come back to the Gold Exchange Bank? A. Next morning.

Q. On Tuesday morning, Sept. 28? A. Yes, came back with all the rest of the checks—all the same to the extent of about three millions of dollars.

By Mr. VAN COTT?

Q. The Gold Exchange Bank paid the check? A. Yes, sir.

HENRY N. SMITH being duly sworn by the Chairman of the Committee, and examined by Mr. Parsons, testified as follows:

Q. What, in September, 1869, was your firm, and what was their business? A. Smith, Gould, Martin & Co.,—business stock and gold brokers.

Q. Was Jay Gould a member? A. He was.

Q. How long had the firm, as it then stood, been in existence, prior to September, 1869? A. Could not state without reference. Could not tell the year he went in.

Q. Was it a considerable time A. It was—could not tell exactly without reference.

Q. Prior to 1869, had your firm been operating largely in gold? A. Yes, sir.

Q. Through E. K. Willard & Co.? A. Yes.

Q. And also Wm. Heath & Co. A. They had some; also, through the firm of Mr. Carver.

Q. Can you state any others than those you have mentioned who did business prior to September 24? A. Gillespie may have done some, and Lloyd and Hamilton. I don't know of any others.

Q. Directly or indirectly? A. I don't know of any.

Q. Did not Walter B. Palmer? A. I think he may have executed some orders that were for us.

Q. Who was Walter B. Palmer? Was he not the President of the Tenth National Bank? A. Not at that time.

Q. Did he not subsequently become President? A. Since 1st of January, I believe.

Q, Did he have at that time any connection with the Tenth National Bank? A. No, sir.

Q. Do you remember the commencement of a suit by Chas. J. Osborne against the Gold Exchage Bank, about the 29th of September? A. I remember hearing of it.

Q. Do you remember being present at any conversation prior to such a suit being commenced? A. I do not.

Q. Was Henry K. Enos one of the brokers through whom you had been operating in gold prior to 24th September, 1869? A. He was.

Q. Who were the attorneys of your firm prior to September 24, 1869? A. I think Field & Shearman.

Q. And they had been so for what length of time? A. Well, we had no legal business before that of any consequence.

Q. About how long had they been your attorneys? A. Not very long.

Q. Do you know Frederick A. Lane. A. I do.

Q. And did you prior to September 24, 1869? A. Yes, sir.

Q. Did you see him during the few days preceding the 29th of September; and if so, where? A. He was down at the office with me.

Q. The office of your firm? A. Yes, sir.

Q. Was there any conversation between Lane and yourself, or any member of your firm in reference to the gold that was at that time being carried by your firm, and for your firm by these

brokers? A. We may have had conversations. Don't remember what it was.

Q. Do you remember anything being said about legal proceedings? A. Nothing, only in regard to protecting ourselves and carrying out the contracts as we had made them.

Q. (Repeated.) A. I cannot remember. There may have been some conversation. He was down there to help me in taking care of myself.

Q. Do you mean to say he was there as an attorney of the firm, or merely as a friend? A. More as a friend.

Q. Had Lane ever acted as your attorney? A. He never had.

Q. Did he accompany you on any occasion, about that time, to the office of Field & Shearman? A. I can't remember that he did.

Q. Did you keep an account at the time in the Tenth National Bank? A. I think we closed our account in the Tenth National Bank one or two days before the 24th day of September. Am not positive. Could not tell without reference.

Q. Have you any recollection on that subject? A. As I said, I think we closed our account one or two days before the 24th of September.

Q. Could you tell by referring to your books? A. The books would show. The check book and some others.

Q. Did you know that Mr. William M. Tweed and Peter B. Sweeney were directors of the Tenth National Bank? A. I don't think they were.

Q. Were you acquainted at that time with William M. Tweed and Peter B. Sweeney? A. No, sir.

Q. Had they been operating in gold prior to September, 1869? A. Not to my knowledge.

Q Had your firm been carrying any gold for them? A. Not to my knowledge.

Q. Were they at your office prior to the 24th of September, 1869? A. Not to my knowledge.

Q. Did you see them at any other place? A. Not to my knowledge.

Q. Have you not seen them at the Erie Railway office? A. Not to my knowledge.

Q. When you state that you think your account in the Tenth National Bank was closed a day or two previous, to what date do you refer? A. Previous to the 29th September, 1869.

Q. Was your account withdrawn? A. My impression is, it was drawn to within one or two hundred dollars.

Q. When was this? A. I think two or three days prior to September 25th the account was reduced.

Q. Had they been certifying for your firm? A. Yes, sir.

Q. To what amount? A. Our business was done in the Tenth National.

Q. Will you state what would be the amount of the daily certification? A. I don't know

Q. Would it be $500,000? A. I don't attend to that part of the business.

Q. Still you must have some general knowledge? A. I do not know.

By Mr. NILES:

Q. Do you mean over-drafts, or the total of their daily certifications? A. I referred to over-drafts. I misunderstood the question. The amount of daily certifications may have been two or three millions.

By Judge FULLERTON:

Q. Mr. Smith, are you acquainted with Judge Cardozo? A. I never saw the gentleman until last evening. I asked you if Judge Cardozo was present.

MERCANTILE FIRE INSURANCE COMPANY—*9th Specification.*

I produce from the files of the County Clerk a petition in the said matter, dated 31st October, 1871, verified the same day.

(The petition, together with the affidavit and order, read in evidence, marked 9th Specification, A.)

I also produce affidavits on the part of the Company, sworn to on the 2d, and after that on the 3d of November, with statement by Superintendent George W. Miller, of the Insurance Department, State of New York, annexed, together with order made on that day. (The order by Judge Cardozo, filed November 3d, 1871, read in evidence, and marked Specification B.)

WM. A. ANDERSON, being duly sworn by Chairman of the Committee, testified as follows:

Q. Are you the President of the Mercantile Fire Insurance Company of New York? A. I am, sir.

Q. How long have you held that position? A. About eighteen months.

Q. Do you remember some proceedings taken in October, 1871, to put your Company into the hands of a Receiver? A. I do, sir.

Q. Were you President of the Company at that time? A. I was.

Q. In this proceeding did you make an affidavit, sworn to before Edwin L. Owen, Notary Public, verified on the 7th October, 1871? A. Yes.

Q. Are the contents of this affidavit (marked 9th Specification B) true? A. They are, sir.

Q. Do you know Wm. H. L. Owens, who was the petitioner in that proceeding? A. Never saw the man personally. Know him to be a holder of some stock in the Mercantile Fire Insurance Company.

Q. When did Owens become a stockholder of the Mercantile

Fire Insurance Company, and for what number of shares? A. There were ten shares of stock transferred to Owens on the 31st of October, 1871, about or a little before 12 o'clock, noon.

Q. Was that the day upon which was granted the order appointing a Receiver? A. On the same day we received a copy of an injunction from the Court.

Q. What number of shares did Owens then have transferred to him? A. Ten shares.

Q. Do you know from whom he purchased the stock? A. The stock was formerly owned by Oliver J. Lay. I have the transfer book with me.

Q. Do you know when Owens became a purchaser of the stock, and from whom? A. I don't know, of my own knowledge.

Q. Did Owens himself attend at the office of the Company on the occasion of the transfer? A. He did not.

Q. By whom was the stock transferred to his name? A. By Mr. B. F. Rice, acting as attorney for the purpose of transferring the stock.

Q. What next happened, in respect to the knowledge of the Company of the existence of a Receiver, after 12 o'clock on the day of that transfer of stock? A. The first information we had was by the service of an injunction by the Receiver himself, after 3 o'clock on that day.

Q. The same day? A. Yes.

Q. Was the Receiver accompanied by any person, or did any person meet him directly afterwards? A. He came in alone, and in a few minutes afterwards, his counsel, who he introduced as Mr. Gratz Nathan, entered.

Q. Did you understand that there was relationship between Judge Cardozo and Mr. Nathan, and if so, what relationship? A. I understood that Nathan was a nephew of Judge Cardozo.

Q. How long did Gratz Nathan and the Receiver Rogers remain at the office of the Company that afternoon, and what took place while they were there? A. As near as I can recollect, Rogers remained till about four o'clock—Nathan less time—when Rogers went out and left a watchman in charge.

Q. What was done by Nathan and Rogers while they remained? A. They took a memorandum from the Secretary of the assets in a memorandum book, I guess, and also of the assets of the Company, and also of the cash in the office.

Q. At whose suggestion was that done? A. I can't say whether I heard any suggestion.

Q. Did you hear Nathan say anything, and if so, what during that time? A. No, sir; I only know a few of our Directors, one Wm. A. Thompson, connected with the Merchants' Exchange Bank; saw Mr. Nathan at that time, and Nathan informed Thompson that the affairs of the Company were in the hands of a Receiver, and notified him not to pay out any money from the Bank on the checks of the Company, as counsel for the Receiver.

Q. What became of the list of the assets of the Company, which was prepared in the afternoon while they were there? A. McCarty took a memorandum of the cash in the office.

Q. Who was McCarty? A. The assistant of the Receiver, left as temporary Receiver in charge of the office.

Q. Was actual possession taken of the property of the Company, and if so state the circumstances? A. Immediately after this memorandum of the securities were taken I asked Mr. Rogers for the privilege of posting the books of the Company, which was granted, he informing me at the time that I was not to pay out any money; he then went away leaving his attendant, McCarty, in charge of the office. After some time the attendant asked me what time I would be likely to get through? I told him I should probably be engaged till very late. He then left me in charge of the office, saying that I could lock up the safe and give the keys to him on the following day.

Q. How long did the property of the Company remain in the custody or possession of the Receiver? A. Until the order granted was vacated on the 3d day of November.

Cross-examined by Mr. E. H. OWEN:

Q. When you say that the Receiver remained in actual possession you don't mean to say that you were disturbed in the possession of your property? A. We were not permitted to receive or pay out any money.

Q. But you had the key of your safe and were not disturbed in carrying on the business of your office? A. We had the privilege of writing up our books but were enjoined from doing any business whatever.

Q. Why did you particularly want to write up your books? A. To get out the statement; at the time this injunction was served on us we were about making a statement for Superintendent Miller for the purpose of getting an examination of the Company. The Superintendent afterwards examined us and made an order requiring us to make good the capital.

Q. Do you remember the date; his statement is dated the 2d of November? A. I never had a copy; all I had was a requsition to make up our capital; I think it was made on this day; it was handed in on the 21st of December, at which time we complied with the request.

Q. Did Mr. Miller take any part in the motion to dissolve the injunction? A. We consulted him in the matter, and he appeared in Court.

Q. Have you ever paid the Receiver or Mr. Nathan anything for their services or disbursements, or the expenses connected with the Receivership? A. I have not, sir.

Q. Has any demand ever been made on the Company to pay any such fees or expenses? A. No.

Q. You said that you understood Nathan was the nephew of Judge Cardozo; how did you get that information, and are you

sure that you are not mistaken—that he is not the nephew of Judge Cardozo's wife? A. I have only been informed generally; I have no personal knowledge; I have never heard that mentioned.

Q. Has your Company ever had any business transactions of any kind, that is, legal business, before Judge Cardozo? A. Never, sir, to my knowledge.

Q. Give the date, if you please, of Lay's certificate of stock? A. The certificate was issued to Lay on the 20th day of February, 1858; the transfer was made on the 31st of October, 1871, to Wm. H. L. Owens.

Q. For how many shares was Lay's certificate? A. Ten shares.

Q. What is the date of the power of transfer? A. The power of transfer was dated on the 23d day of October, 1871, and when presented at the office, it was in blank; it was presented by Mr. Rice; at that time I asked him his name; he said it was Rice, and I filled in his name, so that he could act as attorney on the transfer; the transfer was made on that day.

Q. You don't know how long Owens had been owner of these shares? A. No.

By Mr. HILL:

Q. What is the amount of the shares? A. $50.

By Judge FULLERTON:

Q. Did you say the certificate was filled in in your presence? A. No; the date was filled in when it was in the hands of the party; the name of the attorney was filled in in my presence.

Q. I understood you to say the date was blank? A. No; I said the name.

By Mr. HILL:

Q. What is the business of Gratz Nathan—do you know? A. No, sir, I do not.

Q. Do you know whether or not he is a lawyer? A. I couldn't say.

Counsel for the accused here state that they have no objection whatever to admit that Gratz Nathan is a young lawyer in this city, and nephew of Judge Cardozo's wife.

By Mr. OWEN:

Q. Did you not call me in immediately after, or very soon after, the entrance of the Receiver? A. I did, sir; I sent for you immediately.

Q. Do you recollect what advice I gave you—whether to get an order to show cause, or to wait until the return day of the order? A. You advised me to wait until the return day. I asked you to go with me that evening, and see Judge Cardozo, and try to get the order modified, so that we could go on and do

business. On the 3d of November the order was returnable, and you advised me to wait until then.

By Mr. PARSONS:

Q. We would like to ask whether Mr. Owen said anything as to the probability of success in case of such an application to Judge Cardozo? A. I don't think he did, sir. I don't remember that he said anything, except making the remark that the order was returnable on the 23d of November, and that Judge Cardozo wouldn't hear it before that day.

By Mr. HILL:

The attorney for the petitioner was Mr. Buckley, of Platt, Gerard & Buckley.

By Mr. PARSONS:

He appeared as attorney for the petitioner on the hearing.

Mr. WILLIAM HEATH, being duly sworn by the Chairman of the Committee, and examined by Mr. PARSONS, testified as follows:

Q. In September, 1869, what was your firm? A. William Heath and James M. Ellis—same as now.

Q. What was its business? A. Commission brokers; doing business directly on commission.

Q. Prior to September 24, 1869, was you acquainted with Jay Gould, or his firm of Smith, Gould, Martin & Co.? A. Yes.

Q. During what length of time had you been acquainted with either Mr. Gould or the firm? A. I became acquainted with Mr. Gould when he was elected a member of the Drew Board of the Erie Railway Company.

Q. In the early part of September, and coming down to the 24th of September, was Jay Gould operating in gold through your firm? A. No, sir.

Q. Had you such transactions with his firm of Smith, Gould, Martin & Co.? A. Yes, sir.

Q. And also with J. Fisk, Jr.? A. Yes, sir.

Q. What amount of gold was your firm carrying for Mr. Fisk, and what amount for Smith, Gould, Martin & Co., on September 24, 1869? A. We were not doing anything for Fisk in gold; we did something in stocks.

Q What amount for Smith, Gould, Martin & Co.? A. I take the position that I am the confidential agent of these parties, and stand in the same relation to them as a lawyer does to his client. I am under the same obligation of secrecy, and I don't propose to answer any question touching the private affairs of a customer of mine unless I am obliged to do so.

The CHAIRMAN:

The witness will answer the question.

WITNESS:

Under what ruling?

The CHAIRMAN:

Under the ruling of the Committee.

A. I was carrying about seven millions gold for Smith, Gould, Martin & Co.

Q. Was not the amount nearer eight? A. It might have been; it was in that neighborhood; may be seven or eight.

Q. Did you subsequently learn of the pendency of a suit in the Supreme Court, in which there had been granted by Judge Cardozo an order of injunction and Receivership, by which Augustus L. Brown had been appointed Receiver of the Gold Exchange Bank? A. No, sir, I did not. My mind was fully occcupied with the details, and at that moment they were quite sufficient to occupy it to the exclusion of everything else. I had about four millions of stock and seven millions of gold, and it was about all I could take care of in attending to my own affairs. All I know is that an injunction was served upon me. I don't know who signed it.

Q. Have you forgotten the circumstance that on or about, or shortly after October 9, 1869, your firm received a very large amount of money, in currency and gold, from Augustus L. Brown, as Receiver of the Gold Exchange Bank? A. Yes. We received about a quarter of what was due us on the 24th. They failed to pay what they owed us, and we had to take it in driblets.

Q. Please confine yourself to the question, whether your firm did receive from Augustus L. Brown, as Receiver of the Gold Exchange Bank, on or about the 9th of October, 1869, a large amount of currency and of gold? A. No, sir; we did not receive near what was due us. The fact was, that on the 24th day of September, 1869, the Gold Exchange Bank owed my firm in cash, on a contract of their own making, and it took two months to get the money.

Q. All that I desire to ask is, whether you did receive a certain amount of money from the Reeeiver at that time. I only wish to get at the fact? A. Yes; we received an amount which did not pay what was due us.

Q. State what was the amount that you did receive from Mr. Brown? A. I received nothing. I employed Martin & Smith as my counsel, and it was paid to them.

Q. But it eventually found its way to you? A. Yes; they paid it over to me.

Q. State what was the amount paid you by Mr. Brown, as Receiver, through Messrs. Martin & Smith, your attorneys? A. I don't remember when Brown's Receivership ended. I think it lasted only twenty-four hours. Mr. Jourdan succeeded him. About the 9th of October, the first money we got was about

$22,000 in currency. Afterward, the Gold Exchange Bank paid us $400,000 in gold.

Q. On what day did you receive this? A. Between the 1st October and 12th November. I can't fix the date. All these dates can be found in the report filed with the Receivership.

Q. Does the report show these dates correctly? A. Yes, sir. If you will allow me to see the report, I will check them off at once.

Q. Were the amounts which were received by you due to you upon transactions in gold which matured on the 24th of September? A. Yes, sir; and which we had made good to the Bank.

Q. Had the Tenth National Bank certified largely for Heath & Co. prior to the 24th September, 1869? A. Yes.

Q. What was due by Heath & Co. to the Tenth National Bank for overdrafts immediately prior to September 24th? A. There was never anything due from Heath & Co. to the Tenth National Bank for overdrafts, excepting one amount, and that was through mistake, on the 24th (I am speaking from recollection), of about $100,000.

Q. When was that paid? A. As soon as we got it from the Gold Exchange.

Q. Then you paid it from the money you obtained from the Receiver? A. Yes.

Q. State, as near as you can, what was the amount? A. Between $100,000 and $150,000.

Q. Can you state that the amount was not as much as $250,000? A. I cannot. I think it was not, but I am speaking from recollection.

Q. Was it not as high as $500,000? A. I am quite sure it was not.

Q. Is the nearest you can state, according to your present recollection, between $250,000 and $500,000? A. No, sir, between $100,000 and $150,000.

Q. How long had you had transactions with the Tenth National Bank prior to September 24, 1869? A. I think the account was opened in the Spring of that year.

Q. Do you know who the Directors of that Bank were? A. No, sir.

Q. Do you know Mr. Wm. M. Tweed and Mr. Peter B. Sweeney? A. No, sir.

Q Did you know them as Directors of that Bank? A. No, sir; I knew nothing of them, save what I read in the public prints.

Q. Had Messrs. Martin & Smith been your attorneys prior to September, 1869? A. Yes, sir; from my early youth, and I was born into litigation.

Q. When did you first call upon them in connection with the matter? A. On the 24th day of September; I put the whole matter in their hands that night before I slept.

By Judge FULLERTON:

Q. You spoke of the overdraft being a mistake; please explain that statement? A. It is customary, in Wall street, for a bank to certify for customers, and they certify up to a certain limit. On the day of the panic all the accounts were in a fearful state of confusion, and the Gold Exchange Bank had over a million of dollars of ours locked up, which disarranged our affairs. The Gold Exchange Bank had generally paid, but on this day they failed on us.

Q. Do you know Judge Cardozo? A. No, sir.

Q. Would not if you saw him? A. I don't know him now.

By Mr. PARSONS:

Q. Was any part of the amount, due upon these transactions, due from the Gold Exchange Bank at all, or was it due from the parties with whom you had your transactions? A. Certainly, sir; it was due to me from the Bank, because they accepted my sheet and I paid the balance—I think half a million in gold—which they received. They took in all the money that came, but paid out none.

Q. How did you furnish that amount? A. I handed it in with my statement; I am not exactly certain in what form.

Q. And that entitled you to the difference, which became due to you when the clearances were settled? A. Yes, sir.

Q. Did this $500,000 make up the amount which subsequently became due to your firm? A. No, sir; the Gold Exchange Bank paid gold notes; they had no money.

Q. When did they pay this money? A. Within two months.

Q. Can you fix the day? A. We received some, I think, within two weeks, from the Receiver. I am not positive, but think from Mr. Jourdan, Receiver, after Mr. Brown resigned.

The PEARSALL and O'CONNOR case.

District-Attorney GARVIN, being duly sworn, testified as follows:

By Mr. PARSONS:

Q. Are you District-Attorney of this city and county? A. Yes, sir; I have been since 1st January, 1869.

Q. You have been subpœnaed to produce here papers in your office, in the matter of the proceeding against Mary Pearsall and Joanna O'Connor. What papers are there in your office in reference to that matter? A. Since receiving the subpœna I have looked, and could not find any.

Q. Have there been any such papers in your office? A. Yes. There was a notice of Habeas Corpus, which we hardly ever preserve. They come to the office in large quantities; often a great many in the course of a day. The prisoners are remanded, and notices are unimportant.

Q. You saw a notice—there was a notice? A. Yes; a notice

informing the District Attorney of the return day of the writ of Habeas Corpus.

Q. Is that notice the only paper in regard to that proceeding which was received in your office? A. The only one that I have any knowledge of.

By Judge FULLERTON:

Q. You appeared before Judge Cardozo on the return of that writ? A. Yes, sir.

Q. You saw the papers at that time? A. Yes.

Q. What papers? A. I have no very distinct recollection.

Q. Was there anything unusual about this notice? A. No, sir; I came in on the ordinary notice, which is always served. There are two methods of service, one by a notice and the other made for convenience on the writ; they fill up the blank copy and serve it, which we regard as the best kind of service, because it gives us all the result; which way this was made I don't remember.

Q. May not papers have been sent to your office and been mislaid? A. Oh, yes.

Q. You do a vast deal of business? A. Yes; quite enough to employ all the help that we have, and a great many more that we don't have.

Q. You have not sufficient accommodation in your present office, and have therefore been put to great inconvenience? A. Yes, sir.

Q. Please to state your recollection in regard to this case? A. As far as I can recollect, some sort of proceeding was pending in Court, upon which an order was made, in reference to an infant child; and afterwards that child, for some reason, that child was spirited away and could not be found. An order was made committing certain persons, I think two women, Mary Pearsall and Joanna O'Connor, on the ground that they knew where this child was, and would not produce it. And then the Habeas Corpus succeeded for the purpose of liberating them from this imprisonment.

Q. What was the question in regard to the infant child? A. The question was a question of custody.

Q. Who were seeking to obtain custody of the child? A. On one side the mother, and it was contended on the other side that the mother and these two women were engaged in keeping a house of ill fame.

Q. So it was to rescue the child from degradation and from being brought up by these people, who were so charged, that this action was prosecuted? A. Yes, I believe so.

By the CHAIRMAN:

Q. What are your sources of information? A. I speak from what I gathered in this investigation.

Q. You were personally present at the time? A. I was present

at the investigation before the Judge on the return of the writ of Habeas Corpus.

By Judge FULLERTON:

Q. You have spoken of certain persons in connection with the mother? A. I can't be sure, but my recollection was that these two persons with the mother were sisters.

Q. What was the name of the mother? A. Ellen McGraw.

Q. What was the age of the child?

By Judge CARDOZO:

A. A little girl, about five years old.

Q. Do you recollect into whose custody the child was given? A. I do not. I was not present at the original commitment, but my present recollection is that a proposal was made to have this child committed to some institution. I know that was talked of as a good method of disposing of the child.

By a MEMBER OF COMMITTEE:

Q. I think you spoke of another proceeding. Was there another proceeding anterior to this?

By Judge FULLERTON:

Q. Was there not a suit of McGraw against McGraw? A. Yes; I think it was between the mother and father of this child—a divorce suit.

Q. And this Habeas Corpus was issued in that suit? A question arose as to the custody of that child in that action? A. That is my recollection. It is a long time ago. About January, 1869.

By Mr. PARSONS:

Q. Have you any personal knowledge of the matter about which you have testified? A. None, except what I have derived from my connection with the Habeas Corpus proceedings.

Q. When first did you appear in Court—in that proceeding or in the proceeding to which it succeeded? A. I think I appeared first on the return day of the Habeas Corpus.

Q. Then all this proceeding in respect to the custody of the child had transpired? A. Entirely so.

Q. The information which you have just given the Committee was obtained from what source? A. Obtained on this hearing.

Q. Were witnesses examined on that hearing? A. I should think not.

Q. Were affidavits produced? A. I think there were.

Q. Will you look at the papers I now hand you, and state whether you ever saw, in reference to that case, any other papers? A. Yes, sir; I think I saw a petition.

Q. For what? A. On which the Habeas Corpus was granted.

Q. Is that the only other paper concerning that proceeding? A. I am not certain, but I think there were some affidavits introduced.

Q. In making the statement you did make on your examination by Judge Fullerton, am I to understand, these were your only sources of information? A. I say that is my general recollection of the transaction; I can't tell exactly how I got the information; it is now impossible. There was a good deal of argument; may be from that and may be from the papers. As regards the original suit I know nothing except this paper. As regards the facts which transpired, I know nothing of my own knowledge except general knowledge.

Q. And from what sources you are unable to state? A. I can't state whether I derived it from conversation, affidavits, or general argument.

Q. You do not mean to state that any papers, then before Judge Cardozo, showed what you have stated to the Committee? A. Could not say; my impression is there were affidavits.

Q. Do you know there were? A. No, sir.

Q. Have you ever had them in your possession? A. It is possible I had the petition, but it is not likely.

Q. Look now at the two papers handed you, and state whether they are the original commitments upon which Mary Pearsall and Joanna O'Connor were confined; and state whether or not the written part, in each case, is in the handwriting of Judge Cardozo? A. I can't say this is the original commitment, but I think that is in the handwriting of Judge Cardozo. I think I recollect that.

Q. That is the commitment which specified as a charge a criminal contempt of the Supreme Court of the State of New York? A. As an answer in connection with that, I probably derive my information from those who were there.

Q. Did you ever see the other commitment, which specified as a charge, keeping a bawdy house? A. I believe so.

Q. Is not that written part also in the handwriting of Judge Cardozo? A. I should think it was.

Q. Did you ever see any affidavits, or were you ever present on any examination when any charge was made, upon which was issued either of these commitments?

(Papers read in evidence, marked "Charge 3," Exhibits A and B.)

Q. Look, now, if you please, at the papers handed to you, and state whether they are not the original writs of Habeas Corpus for Mary Pearsall and Joanna O'Connor, the original notice which you have stated to have been served upon yourself, and the return of the Warden of the City Prison to the writ? A. That is the return, I should think. I have no doubt of it, but can't say from personal recollection. I should think this was the original writ of Habeas Corpus, and, it may be, the notice. I think I am mistaken; I think this is the nottce served on me.

Q. Do you, then, identify the three papers? A. I think that marked "C" is the copy which was served on me, from its appearance. I can't recall personally anything about it: and the other, I think, is the original writ which was allowed by Judge Clerke. I should think that was the return. I think these are the papers connected with this transaction, because I see my own handwriting.

(Papers read in evidence, marked "Charge 3," Exhs. D E F.)

Q. These are the initials of Judge Cardozo? A. I have seen hieroglyphics of that kind which he calls his initials.

Q. State, if you please, if that document, the commitments, and the initials as well, are not all in the handwriting of Judge Cardozo? A. I should think they were, although that is written unusually well for him.

Q. State whether or not the endorsement is in the same handwriting? A. Yes.

By the CHAIRMAN:

Q. These endorsements are on the original writ? A. Yes.

By Mr. PARSONS:

Q. The last endorsement is in the handwriting of Judge Cardozo? A. The initials are his, I have no doubt.

Q. Have you any knowledge or information as to any bail which was given on the discharge? A. I have no recollection of any sort. I have no doubt of the fact.

Q. Where would that recognizance probably be kept? A. Probably filed with the Clerk of Oyer and Terminer.

Q. At the County Clerk's office? A. Yes.

Q. What is the Clerk's name? A. Vandervoort He is also Clerk of the General Sessions, and in all these proceedings that partake of a criminal character the bonds are ordinarily filed with the Clerk of Oyer and Terminer, because he is also the Clerk of the General Sessions, and they go from him to the Grand Jury.

By Mr. OWEN:

Q. Do you recollect whether any persons were indicted for contempt of Court? A. I have no recollection of any indictment ever being presented. There was an indictment in connection with this transaction, but I don't recollect that it was ever presented.

Q. Will you be so good as to look at your record and give that information? A. Yes, sir.

HENRY M. BENEDICT, being duly sworn by the Chairman of Committee and examined by Mr. Parsons, testified as follows:

Q. In September, 1869, were you President of the New York Gold Exchange Bank? A. Yes, sir.

Q. And for how long prior to that date? A. From the organization of the bank.

Q. Describe, if you please, to the Committee what was the nature and character of the business of your bank as a Clearing House in gold transactions? A. The business was conducted on the clearing principle applied to the two classes of currency—gold and paper. The object of the clearing was to facilitate settlements between buyer and seller, or borrower and lender; it proved to be a great convenience, and the business was done on statements of the dealers supplied to the bank according to the rules and regulations of the bank.

Q. Describe the actual process to the Committee? A. The actual process was to bring all the transactions of the dealers during the day on a statement, each dealer supplying his own statements of transactions with other dealers. This arrangement embraced all the leading bankers and brokers in the city. They would bring the items on a balance sheet, and each dealer would enter on his balance sheet all his transactions of purchases or sales, or money borrowed or loaned, and would settle for the balance on either side in gold or currency as required. It acted as a trial balance for the entire business of the street. This business was conducted regularly for three years without, so far as I know, a mistake of $50.

Q. Do you remember the 29th September, 1869, the day upon which Augustus L. Brown was appointed Receiver? A. Yes, sir.

Q. What was the condition of the New York Gold Exchange Bank at that time with regard to its solvency? A. It was perfectly solvent, sir. The trouble with the bank was that it had more money than it knew what to do with. The panic of the 24th September, 1869, brought nearly every account into a confused state as far as the movement of the bank was concerned. I don't suppose a dozen statements were correct.

Q. As far as the bank was concerned, what was its condition? A. The bank was entirely solvent.

Q. And it continued to be? A. Yes.

Q. Did the bank continue its business? A. As soon as the second receiver entered upon his duties, after a short lapse of time, various payments were made under his direction. I don't recall the space of time he remained in possession—it was, perhaps, a few weeks; but since that time it has gone on regularly as before, and the bank has recovered its position and losses.

Q. And did it pay all the amounts that were due from it on the day the Receiver was appointed? A. Every ascertained debt has been paid.

Q. What was the loss to the bank by the injunction and Receivership under the order of the 29th September, 1869? A. The Receiver's fees, counsel fees and court fees amounted to over $60,000, as I now remember that. I think they are in the evidence gi en before the Committee of the House of Representatives in this matter. Then the bank was required to pay out several sums by special order of Judge Cardozo.

Q. You refer to the order of October 9th, 1869, directing the payment of certain sums to William Heath & Co., and Willard & Co.? A. Yes, sir. I don't know exactly what are the bank laws, but I considered at the time there was a considerable loss. The total loss to the bank growing out of that affair of "Black Friday," as it is called, was something like $400,000.

Q. But to what extent was that due to the injunction and appointment of Receiver? A. This must be only a conjecture.

Q. I only desire your own knowledge? A. I should think, from $100,000 to $200,000.

Q. State, if you please, what was the capital of the bank? A. The capital of the bank was 500,000, fully paid in, and its surplus on the 24th of September was about $250,000.

Q. Of what did its assets consist? A. Almost entirely of call loans.

Q. Good; A. Yes, entirely; never lost a dollar of them.

Q. In stating the losses due to the injunction and Receivership, do you include the $60,000 which was paid for Receiver's and counsel fees? A. I do.

Q. Describe to the Committee wherein consisted the other losses making up the amount which you state? A. Those losses, in part, accrued out of the decline in gold. The bank received a large amount in gold which by the failure of parties to take from the bank upon their settlement, a large amount had to be sold in the market for the payments ordered by the Receiver. If they could have closed out promptly that gold the loss would have been less on that account. I have never seen any of the accounts of the second Receiver and don't know in what manner he obtained settlements.

Q. Explain how there was loss in consequence of the payments to certain creditors of the bank, directed by the order of the 9th of October? A. In one item I remember $75,000 were set apart by distinct arrangement with Jay Gould to protect certain accounts in which he was said to be interested. The negotiation was for him to protect the bank fully, and he finally consented to appropriate $75,000 from Willard's account to indemnify the bank. The money was repaid to Willard & Co. by order of the Court, as I understand.

By Mr. NILES:

Q. Do you mean to say that $75,000 balance due the bank by Willard, was by agreement, left with the bank ror its idemnity? A. It was.

Q. It was left by agreement with Jay Gould? A. Which was coming to Willard & Co. according to the statement in the bank. That money was set apart to protect certain other accounts in the bank in which Jay Gould had an interest, and he agreed that it should be left to protect the bank.

Q. As mere security? A. As a payment.

Q. Did the bank lose anything on these accounts, for which there

should have been indemnity? A. I think it did; I can't know positively, because the matter was taken out of the control of the bank.

Q. You do not know certainly? A. I know the bank lost money somewhere, and I think it very likely went in this direction.

By Mr. PARSONS:

Q. Had these accounts, which were to be secured by the $75,000, been settled or provided for when the order was made directing that payment? A. Not to the best of my knowledge and belief.

Q. To the best of your recollection? A. Yes, sir.

Q How long did you continue to be President of the Gold Exchange Bank? A. I don't remember the date of my resignation. It took place after the Receivership.

Q. Then you were President after the order of the 9th of October had been made? A. Yes, sir.

Q. Did you remain there attending to the duties of your position so far as the injunction and the Receivership would permit? A. Yes, I was there constantly.

Q. What was Mr. Sauzade's relation to the Bank? A. He came in and succeeded me.

Q. Was he previously connected as Vice-President or otherwise with the Bank? A. He was a Director of the Bank and acted as President when I resigned, taking my place.

Q. Do you know anything of the circumstances connected with the amount due Wm. Heath & Co., directed to be paid by the order of 9th October, 1869? A. I don't know anything in regard to the particulars of that statement, further than that there was a statement made, and that it was paid by order of the Court; what the decision was I don't know.

Q. Had there been any interview with Jay Gould in regard to that injunction? A. I had no interviews after the appointment of the Receiver.

Q. How many prior to the appointment of the Receiver? A. I suppose I saw him half a dozen times in the first part of the troubles, on Friday, Saturday and Sunday also.

By Mr. TILDEN:

Q. Will you explain what you mean by a daily statement? Was it a paper on which were entered the names of the parties transacting business, and the sums due to and from them respectively? A. Exactly.

Q. That is to say a particular party brought in a statement of his transactions for the day? A. That is it, and signed it.

By the CHAIRMAN:

Q. Then if the balance was against him he sends his checks? A. Yes, with the statements.

Q. So that instead of paying the several amounts, they simply paid the entire balance of the account? A. Yes; the reason was that the gold movement transactions had become very troublesome, 3,000 or 4,000 checks had to be passed every day. I worked this scheme up in con-

nection with some other gentlemen when we were enabled to settle the aggregate movements of $30,000,000 per day, as the balance would not be over $1,000,000 or $2,000,000.

By Mr. PARSONS:

Q. According to the rules of the bank when were the parties in whose favor was a balance entitled to receive it? A. They were entitled to recive it at half-past 1 o'clock, or as soon as it could be ascertained.

Q. You received all the amounts before you began to pay them? A. Received everything before we paid anything; that was the rule of the Bank.

By Mr. NILES:

Q. What other business did the Bank do except clearing business? A. Regular banking business.

Q. Making discounts? A. Somewhat in discounts, but chiefly in loans.

By Judge TILDEN:

Q. Merely loaning assets? A. Yes.

By Mr. NILES:

Q. Did the bank lose anything on those? A. No, sir, the bank lost nothing in its banking department.

Q. Then all the losses it made, or was liable to make, grew out of this clearing business? A. Entirely so.

Q. There was no liability, excepting after it had received the money? A. No liability at all, until after it received a balance from somebody.

Q. Had there been any payments that exceeded the receipts in the clearances that "Black Friday?" A. No, sir; there had been no payments had. On Friday we received in about $12,000,000 in the ordinary course of business, something like $3,000,000 in currency and $8,000,000 in gold.

Q. Then you were only waiting to know to whom it belonged? A. We were only waiting to know to whom it belonged. The dealers were preparing for their balances, and when the day came, it was impossible to settle in time, on account of the confusion in the accounts. There was but one course left for us, which was to do something in violation of the rules, because the result would have been disastrous, and it was against our policy to have held $12,000,000 in our hands, locked up on that day. This was an emergency never contemplated, and entirely unexperienced. We were compelled to pay that money; in fact, it was as much as a man's life was worth that held money on that day. I had four policemen in the building as it was. There were no possible means by which the balances could be ascertained distinctly, so that the next thing to do was to pay out approximate balances, reserving amounts sufficient to guard against loss to the bank.

Q. On attempting to do that, your purpose was to keep on the safe side? A. Yes, sir.

Q. Did the event prove that you had paid out too much? A. The event proved that, perhaps, some parties might have got more than they were entitled to, but the bank was saved.

Q. To what amount more than parties were entitled to, as near as you can judge? A. There were a few parties; I can recollect two or three who received more than they were entitled to. There were two or three suits, some $50,000 to $100,000 in the movement.

Q. All you paid out erroneously, did not exceed $100,000? A. I don't think so.

Q. Assuming that all these parties were bad, so that you cannot recover anything from them, you had lost then $100,000 out of $750,000, and you had $150,000 surplus, after deducting over payments? A. I think that would be a fair statement.

Q. Will you state what amount was in the bank when the Receiver took charge of it? A. The Receiver took charge of about half a million of dollars. I think that is about the amount.

Q. You don't mean cash assets, but assets available as cash? A. There was a balance coming to the bank from the Clearing House.

Q. Was there not a very large amount which the Receiver, Mr. Brown, did not come into possession of? A. There was an amount which had been paid to the Company of the Clearing House, associated Banks, in gold and other securities, which he did not come into possession of—something like $3,000,000.

Q. Did Mr. Jourdan, the Receiver, subsequently come into possession of it? A. No, sir.

Q. Of what part did he get possession? A. I have never been informed. These items were closed out by the Committee of the Associated Banks, and were bills to them due. I think there was a surplus, but what it was I don't know.

Q. When was this $3,000,000, or whatever amount it was, placed with the Associated Banks? A. The first amount was placed with them on Saturday, the 25th, and the second on Tuesday, the 28th.

By Mr. NILES:

Q. Did you tell anybody, before the appointment of the Receiver, that the bank was insolvent, or its capital impaired, so as to endanger its solvency? A. I am not aware that I did.

Q. When did you first know that any effort was to be made for a Receivership? A. I was advised to be cautious on that point on Saturday.

By Mr. PARSONS:

Q. That was the day that you paid these three millions to the Associated Banks? A. No, sir; what I did Saturday and Sunday, for fear a Receiver would be appointed, and so large an amount of money locked up, I took charge of it myself personally, and had two persons to guard it, and if there had been any occasion, I would have put it where they could not get at it.

By Mr. NILES:

Q. The parties who made this suggestion had probably some basis. When did anybody that was proposing a Receivership give you notice? A. I received no notice until the Sheriff came with the Receiver and took possession.

Q. Then you had no notice that the application was made until the Receiver came into the bank? A. Yes, sir; I had no notice.

By Mr. TILDEN:

Q. Will you state about this $100,000 of over payments, whether they were made to responsible or irresponsible parties? A. All responsible parties.

Q. All responsible parties, as far as you know? A. Yes, sir.

By a MEMBER OF COMMITTEE:

Q. In making these several payments, were these amounts ascertained by any other parties? A. No, sir.

Q. Was that order made by consent? A. I never consented to any part of the proceeding. I never sanctioned or authorized the action of the counsel of the bank.

By Mr. TILDEN:

Q. Who was the counsel? A. Martin & Smith.

Q. The parties to whom was made this payment of $100,000 were parties that you deemed to be responsible at that time, notwithstanding the general embarrassment existing at that time? A. Yes, sir; and parties that I think are responsible now. They were entirely able to meet the claim, so far as I know, if they were willing.

By Judge FULLERTON:

Q. In spite of the general uncertainty at that time, do you believe they were responsible? A. I have no hesitation, at that time.

Q. Is the present President your immediate successor? A. No, sir; Sauzade was appointed after I resigned.

Q. You say somebody told you there was danger of the Receivership; who was it? A. I think one of the directors, but which I cannot now remember.

By Mr. HILL:

Q. Did he state that a Receiver would be likely to be applied for? A. No, sir; he did not.

By Mr. TOBY:

Q. When did you cease to act as President of this Bank? A. I cannot recall.

Q. Was it after Sauzade signed any agreement? A. I can't tell.

By Judge TILDEN:

Q. Have you any memorandum by which you can tell? A. I have; yes.

By Mr. TOBY:

Q. Where is Sauzade? A. He is in this city, with Winslow, Lanier & Co.

By a MEMBERS OF COMMITTEE:

Q. Was he regularly elected? A. Yes, by the Trustees.

By Mr. TILDEN:

Q. Who were the Directors of the Bank at this time? A. Charles H. Ward, Tanner, Sauzade, P. M. Myers, Jas. H. Benedict of Lockwood & Company, Mr. Underhill; I can't recall the other names at this moment.

By Mr. NILES:

Q. Had there been anything said before you resigned, about paying these sums, $75,000 to Willard & Co., and to William A. Heath & Co., amounts claimed by them and also coming to them.

[Witness agress to furnish list of Directors of the Bank, and also date of his resignation.]

By Judge FULLERTON:

Q. I understand you to say that you overpaid about $150,000, and had taken away about $3,000,000? A. No, sir; I did not say that. We paid the Company of Associated Banks $3,000,000, which the Bank owed the Clearing House. On Saturday, about a million and a half dollars of currency, for which it paid gold. That money I held, fearing a Receivership, until the following Tuesday, when we paid out and settled up all but a half a million of dollars, which remained in the Bank. That money went into the hands of the Receiver.

Q. How much was it that you took and placed under care, so that the Receiver could not get it? A. Between $3,000,000 and $4,000,000. The object of that was to keep that money in reserve. I should have gone to New Jersey with it, if necessary.

Q. You say you paid from $100,000 to $150,000 to persons who were not entitled to it? A. No, sir, I should estimate from $50,000 to $100,000, and these persons were entitled to it, *prima facie*, on that statement.

Q. It was a matter of uncertainty with you whether they really were entitled to it or not? A. So much so that I obtained a pledge from them to make good any deficiency.

By a MEMBER OF COMMITTEE:

Q. If the order directing the Receiver to make special payments had not been made, would the person to whom balances were due have received those amounts in a regular manner of doing business? A. I never have been able to find out that point; it was not within my jurisdiction at the time.

Mr. HEATH recalled for the purpose of correcting a mistake in his previous testimony.

WITNESS:

Under a misapprehension of Mr. Parsons' question, I stated that our firm was not carrying any gold for Mr. Fisk. We were carrying $3,000,000 of gold, which was afterwards sold.

Q. When? A. After the 24th.

Q. You were carrying for Smith, Gould, Martin & Co., between seven and eight millions of dollars, gold; and for Fisk as well, in addition to that, about $3,000,000.

By a MEMBER OF THE COMMITTEE:

Q. How much was due your firm from the Bank at the time of this fall in gold? A. I think between a million and two million dollars.

Q. It was due from other parties to be cleared through the Bank, when paid by the other parties? A. It was money due to our firm from the Bank.

Q. When it was received by the Bank? A. No, sir.

By Mr. NILES:

Q. In connection with your statement I understand that your idea is, that the Bank became legally liable whether it collected the money or not, when it accepted your statemant? A. The Bank has settled usage and custom. The statements must be rendered by 10 or 11 o'clock, and on those who are owing the Bank paying the balance due, the bank, on accepting their statement, binds itself to make the clearances. We paid in, on this occasion, the amount of gold sufficient to complete the balance, and the Bank accepted this statement without remonstrance, and therefore were bound to make the clearance.

Q. Whether the other parties to the transaction failed to pay or not? A. That was their lookout. They knew the accounts of those parties.

RICHARD C. BEAMISH being duly sworn, and examined by Mr. PARSONS, testified as follows:

Q. What, for several years past, has been your occupation? A. Clerk of the Chambers of the Supreme Court.

Q. Are you, as Clerk of the Chambers, a deputy of the County Clerk? A. Yes, sir.

Q. Do you sit at the Chambers, or is your office in connection with the Chambers Term of the Supreme Court? A. Yes, sir.

Q. And are papers which are retained by the Justice holding Chambers, delivered by him to you, and are you the deputy of the County Clerk, who in such cases receives the papers kept by the Judge? A. I can't say all.

Q. Is that the practice? A. Yes, sir.

Q. Can you tell who sat at the Chambers Term of the Supreme Court, from the 27th September, 1869, to the 4th October, 1889? A. I can only tell by reference to my minutes.

Q. Can you tell by that book of minutes? A. On the 31st July, as appears by the minutes, the Hon. Albert Cardozo was there. On the 4th August he also sat.

Q. Did he sit on the 4th August, or were decisions only received from him at the time? A. No, sir; he held Court on that day.

Q. Now answer, please, as to the interval between 27th September and 4th October, 1869? A. He did not sit regularly in Chambers.

Q. With the assistance of your book of minutes, can you tell whether Judge Cardozo sat at Chambers, between 27th September and October 4th, 1869? A. I cannot, sir.

Q. Have you any book which will enable you to tell? A. No, sir; this is the only book I have. He did not hold Chambers regularly from that to the 4th October.

Q. The question remains: Can you, by the aid of a book which you have here, tell whether Judge Cardozo did sit at Chambers between September 27th and October 4th, 1869? A. I cannot, sir.

Q. Is this the only book of minutes, being from September 27th to October 4th, 1868, which you have? A. No; only Judge Cardozo's book, which is the only one.

Q. Did you not have a book entirely devoted to this purpose; and is there not a separate book for each Judge? A. Yes, sir.

Q. Were you not subpœnaed to produce all books relating to this point? A. I think not.

Q. Have you, then, a book which will show what Judge did sit at Chambers, between September 27th and October 4th, 1869? If Judge Cardozo did sit in the Chambers between 27th September and 4th October, 1869, would not a note of that fact be entered by you in this minute book containing the minutes of orders made by Judge Cardozo? A. I think it would.

Q. Then will you not tell this Committee whether, if Judge Cardozo did sit at Chambers between 27th September and 4th October, 1869, it would not appear in that minute book? A. Yes, sir; if he had sat during that time, it should appear in this minute book.

Q. Does it appear by that book? (referring to book produced by witness.) A. No, sir; it does not.

Q. Can you not tell by books in your possession what Judge did sit at Chambers during 27th September and 4th October, 1869? A. The books are in the possession of the County Clerk.

Q. Can you not tell by books kept by you, and which are accessible to you, and are not the books of the County Clerk's office accessible to you? A. I don't know that they are.

Q. Will you please state to this Committee whether or not you can refer to books which will show whether or not Judge Cardozo sat at Chambers between September 27th and October 4th, 1869? A. I have such books, and I can tell by referring to them.

(Adjourned to Friday, at 10 a. m.)

JUDICIARY COMMITTEE,
Feb. 23, 1872.

Committee present.

Counsel present, also Judge Cardozo.

RICHARD C. BEAMISH, resumed:

By Mr. PARSONS:

Q. Have you with you this morning, or are there in the room of

the Committee, the books containing the Chambers minutes of the several Judges of the Supreme Court in this district for the year '68 down to '71? A. There are some books here, but I don't know whether all of them.

Q. Do you see some of them? A. Yes.

Q. Will you ascertain whether there is present the book which contains the minutes of the Chambers term over which Judge Clerke presided in September and October, 1869? A. I have the minute book of Judge Clerke of '69.

Q. Are particular Judges in this district assigned to hold Chambers terms, and was that the case in '69? A. [Pauses.]

Q. Can't you answer that question without looking at the book? A. There was an assignment made for the Judges of that year, '69.

Q. Who was the Judge assigned to hold the Chambers Term in this district for September, '69? A. Couldn't tell without referring.

Q. Who was the Judge holding the September term, '69? A. Couldn't tell you without referring to the assignment.

Q. Can't you tell by looking at the minute book?

By CHAIRMAN:

Q. Who actually held it was the question? A. Commencing the first Monday of the term, I presume. [Refers to book.]

By Mr. PARSONS:

Q. Yes. A. Justice Clerke appears to have been one of the Judges.

Q. Look now at the minute book showing the orders made by Judge Clerke, and see what Judge sat at Chambers from 27th September, '69 to 4th October, '69? A. Justice Clerke was one of the Judges—held from September 27th to 4th October.

Q. There is a Chambers room? A. Yes.

Q. Does more than one Judge sit at Chambers in that room at one time? A. Yes; I have known two Judges to be on the bench at the same time.

Q. To hear motions? A. Yes.

Q. When did you ever know that to be the case? A. Frequently to occur.

Q. Can you specify any occasion when that was the case? A. I know I have seen two Judges frequently on the bench there hearing motions.

Q. State on what days between September 27th and October 5th, 1869, Judge Clerke did sit at Chambers? A. He sat on 27th September, 28th, 29th, 30th, 1st October, 2d October.

Q. Does your minute book show that he not only sat, but also granted orders on each of those days? A. He heard motions and granted orders on those days.

Q. Wasn't October 3d Sunday? A. The Court adjourned from the 2d to the 4th.

Q. Does not that indicate that October 3d was Sunday? A. I don't know as it does.

Q. Can't you tell by your minute book whether October 3 was or was not Sunday? A. I can't.

Q. I desire you to state if October 3, 1869, was Sunday. A. The minute book doesn't show.

Q. Don't you see that for six days preceding October 3d, Judge Clerke sat each day at Chambers? Yes.

Q. Don't that show that October 3d was Sunday? I presume it was.

Q. How many orders or proceedings does your minute book show to have been granted by Judge Clerke on 29th September, 1869? A. The entry of the minutes shows twenty-one entries of orders and motions.

Q. In different suits? A. Yes.

Q. Answer the same question as to the number of orders granted and proceedings before Judge Clerke on September 30th, 1869. A. Eleven entries.

Q. Look now at the minute book showing proceedings which have taken place before Judge Cardozo in September and October, 1869, and see whether there is any entry there that Judge Cardozo sat at Chambers on either the 29th or 30th September, 1869? A. I wish to make a suggestion that I was sick September 30, and a new clerk took my place; there appears four entries in his handwriting; I had to leave the Court; the entries will show that they are in different handwritings. Witness refers to book of Judge Cardozo.

Q. My question was whether the book indicated that Judge Cardozo sat there on 29th or 30th September? A. My book does not indicate that.

Q. Does your book contain any entry of any proceeding before Judge Cardozo, September 27 to October 4, 1869? A. Two entries on 27th September—two motions.

Q. Does your book indicate by the entries between September 27 and October 4, whether Judge Cardozo sat at Chambers? A. I don't know that it does.

Q. Don't you know that it does not? Yes.

Q. You mean that it does show that Judge Cardozo did not sit at Chambers between Sept. 27 and Oct. 4, 1869? A. I don't mean to say that, because he might have sat in some other room and held Chambers, and I know nothing about it.

Q. My question asks so far as your books show? A. It shows that he was on 27th September, and heard two motions.

Q. I ask as to the interval between Sept. 27th and Oct. 4th? A. There is no entry of any such being held by Judge Cardozo in any room.

Q. Yours is the regular Chambers room, is it not? A. It is supposed to be the regular Chambers of the Supreme Court

Q. Can't you answer more positively as to whether it is the place where the regular Chambers of the Supreme Court of this district are held? A. In 1869 I think they were sitting in the brown-stone building; I don't think they were in the Court House then; there were

two rooms then taken for Chambers; the Special Term was held at the Chambers, and in the regular Chambers room.

Q. Assuming that you had then moved to the new Court House, how was the fact? A. There was a regular Chambers in the room where I was clerk.

Q. And the minutes from which you have testified upon this examination, with the exception of the four entries to which you have referred, are minutes in your own handwriting, are they not? A. They are.

By CHAIRMAN:

Q. Is there any other book at Chambers kept but this of Judge Cardozo's? A. Not to my knowledge.

Q. What is the next entry after September 27? A. October 4; the Judge was holding Chambers regularly then.

By Mr. PARSONS:

Q. Is what you mean that from October 4th Judge Cardozo was the Judge regularly holding Chambers? A. Yes.

By CHAIRMAN:

Q. October 4th was the first Monday in October? A. Yes; the first Monday of the Term.

By Mr. PARSONS:

Q. You referred to some other room as to which you entertained the idea possibly that it might be the room in which the Supreme Court Chambers was held; had you in mind room 13? A. No; I had reference to the brown-stone building—the old building.

Q. Do you know of such a room in the present Court House as a room called 13? A. Yes.

Q. Have you seen that room designated in orders, in actions and proceedings pending in the Supreme Court? A. I have.

Q. Have you ever been in that room? A. I have, frequently.

Q. Does any other Judge use that room for holding Chambers or an term of the Supreme Court except Judge Cardozo? A. I couldn't state; I don't know.

Q. Answer so far as you do know? A. I don't know of any one.

Q. You do know that Judge Cardozo frequently sits there, and has done so for a considerable length of time? A. I have seen the Judge holding Court there.

Q. Where is room 13 in the new Court House? A. It is right over —the next floor above my office—right up-stairs

Q. Is it a room on the second floor of the new Court House? A. Yes.

Q. Does your book show any proceedings before Judge Cardozo, or order granted by him on either September 29th or 30th, 1869, in either the suit of Chas. J. Osborne *v.* the New York Gold Exchange Bank, or the suit of Edward K. Willard *v.* Wm. H. Neilson and others. A. The proceeding was commenced in the nature of an attachment, and an injunction and an order of arrest wouldn't show in this book.

Q. Will you be so good as to answer my question? A. It does not.

Q. Is there any other book of Judge Cardozo? A. We have a separate book where we enter attachments, injunctions and arrests.

Q. A book in the nature of minutes of the chambers? A. Yes.

Q. Is that book here? A. It is not.

Q. Will that book show such undertaking as may have been filed September 29th or 30th on granting an injunction, or should it show such undertaking as was filed in such case? A. If the undertaking reached my hands it would show.

Q. Is that a book kept by you? A. Yes.

Q. Do not undertakings filed on granting orders of injunction or orders of arrest by the Judge regularly sitting at Chamber's Term, where you have your office, reach your hands? A. Not always.

Q. What is the regular practice as to what becomes of such undertakings? A. Well, in a majority of cases, I suppose they reach my hands; but there is a great many that reach the attorney's hands. They are handed to the officer, on granting the attachment or order of arrest, and they sometimes hand it back to the attorney, and I never see them at all.

Q. Is not the usual practice the other way, that is, to be left with the Judge, and by the Judge to be handed to you; can't you answer? A. I can't answer definitely in regard to that.

Q. Can't you answer as to what is the practice with reference to filing undertakings left with Judges on granting *ex parte* orders, orders of arrest, or injunctions? A. The practice is to leave them with the clerk.

Q. Are you that clerk with whom they are left? A. Yes.

By member (Mr. FLAMMER):

Q. Do you mean they are left with the attorneys? A. They are generally left with the officer who takes charge of the papers, and then the officer passes them to me.

Q. How does the attorney come in? A. And the officer, I have frequently seen hand them back to the attorney, and they frequently file them in the cletk's office themselves; sometimes I don't see them for fifteen or twenty days afterward, if they take them to the office.

Q. That is irregular? A. Yes.

By Mr. PARSONS:

Q. Hand me the book of the orders granted by Judge Cardozo on October 31, 1871. A. (Witness does so.)

Q. State, if you please, whether Judge Ingraham was not regularly sitting at Chambers on and after October 25, 1871, and subsequently? A. He sat in Chambers 25th October and 26th, and the minutes show he sat only to 25th October; the cases he heard previously he signed on those days.

Q. Did he sit on October 31? [referring to book before witness.] A. Yes; October 31.

Didn't he sit on November 1st? A. Yes; November 3d; the 2d he didn't sit.

Q. If any undertaking was filed in the matter of the Mercantile Fire Insurance Company, on October 31, 1869, would that appear by the minute books present before the Committee, or the books to which you have referred, as containing the entry of undertakings filed and orders of injunction and arrest granted? A. It wouldn't appear in any of the minute books present.

Q. Should it appear in the other books to which you have referred? A. It should appear in the undertaking book.

Q. Also a separate book for injunctions and arrests? A. They are all in the same book—attachments, injunctions and arrests are entered in the same book.

Q. Does this book contain an entry of undertakings alone, or other proceedings in which undertakings are filed? A. Undertakings alone.

Q. Is that undertaking book kept by you? A. By me, or my assistant?

Q. What becomes of affidavits or other papers upon Habeas Corpus heard before Judges sitting at Chambers? A. Filed with the County Clerk.

Q. First being left with you? A. Yes; all papers left with me are returned to the County Clerk every day at four o'clock.

Q. Who enters upon the paper the date of filing? A. I generally do.

Q. What becomes of recognizances taken by the Judges sitting at Chambers on the discharge of prisoners? A. Filed with the District Attorney.

Q. Who files them? A. They are sometimes sent over by one of the officers attending at the Court. Generally taken by the Assistant District Attorney, who comes over and attends to the proceeding.

Q. Are they then delivered to the Judge, and by him delivered to the District Attorney, or officer by whom they are taken, to the District Attorney's office? A. Generally so.

Q. That is the practice? A. Yes.

Q. And the affidavits and other papers are filed by you with the County Clerk? A. Yes.

Q. Is there any book in which you make a minute of such proceedings, and if so, what is that book? A. All that I have is simply the Chambers minutes.

Q. Is that the book in which such proceedings are mentioned? A. In bail cases we never make any entries at all.

Q. You mean bail cases where prisoners are discharged on Habeas Corpus? A. Yes.

Q. When there are affidavits used upon discharge on Habeas Corpus, is any entry made of the proceeding? A. Not always.

Q. I want the practice. A. They are simply marked, filed and sent down stairs.

Q I wish to know with respect to your minute book. A. Yes, marking the papers filed and sent to the County Clerk.

Q. You mean make an entry in your books of the papers filed and they are then sent down to the County Clerk? A. Yes.

Q. The title is under the name of the prisoner in your book? A. Yes.

Q. What is the practice with reference to making a minute of orders of reference granted by the Judge sitting at Chambers? A. The entry is generally made with the title of the suit; the Attorney's name and the name of the Referee are entered in the minutes—the papers filed.

Q. By you and your assistant, in the event of your sickness or absence? A. Yes.

Q. How long have you been Chambers Clerk of the Supreme Court, keeping your minutes in the way which you have explained? A. Since '55.

Q. Will you look at the thirteen minute books now before the Committee, produced by Mr. Loew, County Clerk, and state whether they are such minute books kept by you or under your direction? A. A portion of them.

Q. Which are not here? A. They are not all there—that is only a portion.

Q. You mean that this is part of the entire number of books which you have kept? A. Yes.

Q. But are they all the books kept from '68 to '71, including that year? A. They are not all the books.

Q. What other books are there? A. There must be at least twenty or thirty in addition.

Q. You mean corresponding in character with these? A. Yes.

Q. You mean books containing minutes of proceedings before Judges Cardozo and Barnard, or before other Judges than them? A. Before the whole five Judges.

Q. Including minutes of the proceedings before Judges Cardozo and Barnard? A. Yes.

Q. Did you state whether or not, in the minute which you make of orders of Reference, there was entered the name of the Referee? A. Yes.

Q. The name of the Referee is entered? A. Yes.

Q. How, as to Receivers appointed by the Judges sitting at Chambers—is the name of the Receiver entered? A. Not always.

Q. What is the practice? A. The practice has been generally just to mention the Receivers appointed, not mentioning the name.

Q. When the name is mentioned, does that show that that person was the person appointed Receiver? A. Yes.

Q. Are there not many orders of Reference granted by the Judges sitting at Chambers, which are not entered in your book, where the order is taken at once to the County Clerk's office? A. Yes.

Q. Are the larger number entered in your minute book, or taken at once to the County Clerk's office? A. I think probably the larger number are entered in my book.

Cross-examined by Mr. FULLERTON:

Q. Will you state how many orders were granted by Justice Cardozo in Sept., '69? A. That is the entry; I have the entries.

Q. Name the dates, commencing and ending? A. Three on 11th Sept., one on 13th, one on 21st, two on 27th.

Q. Who held the October Term? A. Cardozo.

Q. In October, '71, who held Chambers? A. Cardozo.

Q. How many days in October did Judge Cardozo hold, in October, '71? A. [Refers to his book.] Nineteen days.

Q. From what date to what date? A. From Oct. 3d to and including 31st, '71.

Q. Who was regularly assigned to hold that Term at Chambers? A. By the minutes it shows that all the Judges held Chambers in October, '71.

Q. Who was assigned? A. I think it must have been a General Term then.

Q. I read from the minute book of Justice Clerke, page 188 (1869), as follows:

"Sept. 30th. Present—Hon. Thomas W. Clerke, Justice. Chas. J. Osborne *vs.* the New York Gold Exchange Bank. A. J. Vanderpoel. Petition filed. Takes order granting prayer of petition, and appointing Augustus L. Brown, Esq., Receiver." September 30th, 1869, that is entered. Are not orders sometimes entered in this book called Justice Clerke's book, which were granted by other Justices? A. Yes.

Q. Is it an unusual thing for a Judge to grant orders at Chambers who is not assigned for the month when the orders are granted, and when some other Justice is sitting at Chambers? A. It is not.

Q. Is it not a very common thing? A. Yes.

Q. Don't you know of instances where Justices of the Supreme Court holding Circuits, having got through with their business before the hour of adjournment, sit in their room and hold Chambers during the balance of the day? A. Yes

Q. Don't you know of a great many instances in which Judges holding motions, regularly sent motions in to be heard before such Judges holding Chambers? A. Frequently.

Q. Have you not known instances in which two Judges held in other rooms than the regular Chambers room? A. Yes.

Q. Granting *ex parte* orders and hearing motions? A. Yes.

Q. Quite a usual thing, is it not? A. It is.

Q. Have you not known, frequently applications made for Chambers orders to the first Judge who might happen to arrive at the Hall in the morning? A. Yes.

Q. Is not that a very frequent occurrence? A. Very frequent.

Q. Sometimes, I take it, there are a number of lawyers waiting for a Judge to arrive in the morning for orders? A. Yes.

Q. And apply to the first Judge who presents himself? A. Yes.

Q. Where would the entries be made of such orders? A. In the Chambers book.

Q. In the book of the Justice who was assigned to that regular Chambers for that month. A. Sometimes; yes.

Q. Where are the entries made which are not made in the regular Chambers book? A. In the County Clerk's office.

Q. Have you known orders to be brought to you, to be entered many days after they were granted? A. Yes.

Q. In the hurry of business sometimes, a lawyer who obtains an order from the Judge wouldn't be able to get your attention for some time? A. No.

Q. You would be entering orders for other lawyers? A. Yes.

Q. Have you known of instances where, in case of haste or emergency, they would go away and return in a day or a week, and have them entered? A. Yes, and sometimes a year.

Q. Sometimes an order of reference is not entered at all until it comes into the judgment roll? A. Sometimes I never enter it at all —I don't hear of it.

Q. It is not necessary to the validity of an order that it should be entered at all, according to the practice? A. I don't know that it is.

Q. Will you give the Committee some idea of the rush of Chambers business there sometimes in the morning? A. The *ex parte* business is from 10 to 12 o'clock, and I suppose between those hours there is from fifty to sixty, and sometimes as high as one hundred *ex parte* orders granted.

Q. What proportion get into your book? A. Probably not twenty of them.

Q. Go on and state. A. And a great many of them probably wouldn't come in in a week or two weeks afterwards. I have known orders not to come in a year after they were granted.

Q. How many hours have you known parties to wait, in regular file, approaching the Court to get their orders? A. I have had as many as fifty or sixty waiting at one time.

Q. Have you not known the Justice holding the regular Chambers term, in case of press of business, direct attorneys to go to another Judge? A. Frequently.

By Mr. TILDEN:

Q. You say that sometimes orders are entered in the County Clerk's office; in what book are those orders entered? A. All orders in special proceedings, appointment of Receivers, and in equity proceedings.

Q. A great many of them go down stairs and enter there in the County Clerk's office, and not entered in your book? A. Not come into my hands at all.

Q. What is the rule that determines whether an order should be entered in your book or entered in the County Clerk's office? A. The rule is, that all orders granted by the Judges should be entered in the Chambers minutes, because the order so directs entrance.

Q. Then the orders that are entered in the County Clerk's office are not in strict conformity with the rules.

By Judge FULLERTON:

Q. You mean practice?

Mr. PARSONS:

Asks for provision to be made for witnesses; that there is no arrangement made.

The Committee provide accommodation.

By MEMBER OF COMMITTEE:

Q. This book you have exhibited here—that is the book of decisions of motions? A. Yes, and orders granted.

Q. That is, orders granted on motions? A. Yes.

Q. Upon a motion being argued, and no decision made on the spot, is an entry then made in this book of the affidavits presented and the motion was argued—an entry made at all when motion was argued? A. No.

Q. No entry until the case is decided by the Judge. For instance, in October a motion was argued, and in November, in this book, the order is granted? A. Yes.

Q. That is, in November there would appear in the book order granted for a motion that is presented or argued the preceding month? A. Yes, as of that date.

Q. Then, again, a Judge might sit at Chambers on a certain day, and there may be no entry of it in that book because there was no decision made? A. That is so.

Q. Then this book does not show whether the Judge sat at Chambers or not, absolutely, if he made no decisions on the day, granting no orders? A. (Pauses.)

Q. This book does not absolutely show that a Judge sat on a certain day? A. We generally, every day, when a Judge is present, enter Present, Mr. Justice so-and-so.

Q. Do you enter them as soon as another Judge takes his seat—do you enter his name? A. Yes; I have a separate book for each Judge.

By Mr. TILDEN:

Q. It would appear in the other book, in that case, under the date? A. Yes.

By MEMBER OF COMMITTEE:

Q As soon as the Judge enters, you enter his presence in the respective book? A. Yes.

Q. Do your books show, on 29th September, 1869, any other Judge present except Judge Clerke? A. No.

By CHAIRMAN:

Q. When a Judge regularly sitting at Chambers sends out a motion to be heard by another man, and the motion is granted by the Judge before whom it is sent, where is that entered? A. In the Judge's book before whom the motion was heard.

Q. And not the book of the Judge who sent it out to him? A. No.

By MEMBER OF COMMITTEE:

Q. You don't make any entry unless an order is made—that is, a simple argument, or presentation of the papers, if there is no order made upon the presentation of the papers? A. There is no entry made.

By Judge FULLERTON:

Q. Which Justice of the Supreme Court arrives first at the Hall as a general thing in the morning? A. I think Judge Cardozo was the earliest of any of them.

Q. Does he not often do business before the other Judges arrive? A. Sometimes an hour before.

Q. Who was the last to leave in the afternoon? A. I think he is generally the last one.

Q. Room 13—is it fitted up as a Court room? A. It is.

Q. Have you been there when he was holding Chambers? A. Frequently.

Q. Had you a memorandum book or book of entries such as that? A. I believe there is. I went up with my calendar and left it there with the motions that he was to hear.

Q. Have you not known the Chambers calendar to be called up stairs, and motions sent up to the Judges? A. I have made out a separate calendar of motions to hear, and taken them to the Judges to be heard.

By MEMBER:

Q. An order granted anywhere else except at Chambers or room 13—would any minute be made in your book or the papers filed directly? A. It would if the papers reached my hands.

Q. The papers might be filed directly? A. Sometimes the attorney procuring the order would file them himself down in the County Clerk's office.

Q. For instance, if made at night, in any case, on next day would it appear in your book? A. No; they generally file them in the County Clerk's office; they don't reach me at all.

By Judge FULLERTON:

Q. Is it an unusual thing for some Justice of the Supreme Court, not regularly assigned to hold Chambers, to take the place of the Judge who is thus regularly assigned during the day? A. Frequently.

Q. In case of sickness? A. Yes.

Q. Or the necessary absence of the Judge holding Chambers, on business? A. Yes.

Q. He calls some one in to fill his place in case of absence? A. Yes.

By MEMBER:

Q. Then you mean to take another book? A. Yes.

By another MEMBER:

Q. In case of a substituted Judge you make the orders assigned to him? A. Yes.

By MEMBER:

Q. Then, if in neither of these Judges' books of Chambers' minutes —that is, if there is no entry made of any Judge being present in any of those books on a certain day, the conclusion is that the Judge did not sit at Chambers if the name does not appear in any of those books? A. Yes.

Q. And if any orders were made they were made elsewhere? A. Yes.

By Mr. PARSONS:

Q. Is Mr. A. J. Vanderpoel, who is mentioned in the minute of Sept. 30th, '69, as having obtained an order granting the prayer of petition and appointing Augustus L. Brown, Esq., a Receiver, a member of the firm of Field & Shearman? A. Couldn't say.

Q. Don't you know Mr. A. J. Vanderpoel? A. I don't know that I know him personally—no.

Q. Mr. Aaron J. Vanderpoel? A. I don't know that I do know him personally.

Q. You don't know Mr. A. J. Vanderpoel, of the firm of Brown, Hall & Vanderpoel? A. No.

Q. Do you know such a firm as Brown, Hall & Vanderpoel? A. I do.

Q. Do you know whether Mayor Hall is a member of that firm, and has been for several years? A. Only what I heard.

Q. Do you know that by common reputation and notoriety? A. Yes.

Q. Is Mr. A. J. Vanderpoel a counsel very frequently practicing in the Supreme Court, and very frequently representing one side or other upon motions which are heard before Judge Cardozo? A. I know there is such a man as A. J. Vanderpoel.

Q. Can't you answer the question I put to you? A. Let me hear the question again.

Q. Is not Mr. A. J. Vanderpoel mentioned in that minute, a lawyer of this city, frequently practicing in the Supreme Court, and frequently representing one side or other upon motions heard before Judge Cardozo when sitting at Chambers? A. I know there is such a gentleman that practices there very often.

Q. Is that the best answer you can make to the question I have twice put to you? A. I think it is.

Q. Did you e er hear of such a man as Augustus L. Brown, who, by your minutes, was, on the application of Vanderpoel, appointed receiver in the case of Charles J. Osborn *vs.* The N. Y. Gold Exchange Bank? A. I have heard of the gentleman. Yes.

Q. Did you ever see him? A. I think I have.

Q. Have you any doubt on the subject? A. I think not.

Q. State then, whether he is a member of the firm of Brown, Hall & Vanderpoel? A. I believe he is, sir.

Mr. PARSONS:

I now ask that this minute in Judge Clerke's minute book of Sept.

30, may be copied in the stenographic report of the proceedings before the Committee, if it has not already been done. It reads thus:

"Charles J. Orborne *vs.* The New York Gold Exchange Bank. A. J. Vanderpoel, petition filed, takes order granting prayer of petition and appointing Augustus L. Brown, Esq., Receiver."

Q. Mr. Beamish, if the order stated in that minute was made by Judge Cardozo, was not Judge Clerke the Judge sitting at Chambers and regularly holding Chambers on that day, Sept. 30, '69? A. [Refers to book.] Yes.

Q. State on what dates in Sept. '69, were made the eleven orders which you have stated were made by Judge Cardozo in September, '69. I ask you to refer me to the minute book showing what those dates were. A. [Witness refers to book.]

Q. Were not the eleven orders made by Judge Cardozo in September, '69, made on days when, as the minute book shows, he was not sitting at Chambers? A. [Refers to book.] He was not sitting at the regular Chambers room by the minute book.

Q. Is there any entry in the minute book of the character which you described on the examination of Mr. Flammer, "present Hon. Albert Cardozo," indicating that he sat at Chambers on those days? A. There is no entry of it, sir.

By Mr. TILDEN:

Q. In whose handwriting is the entry which has been copied into the minutes in Judge Clerke's minute book, Sept. 30, '69, the minute being of the appointment of Augustus L. Brown as Receiver, in the case of Osborne *v.* The Gold Exchange Bank? A. In my handwriting.

By CHAIRMAN:

Q. By the minute book by whom does that order appear to have been made? A. By Justice Clerke.

By MEMBER:

Q. What is the last day prior to Sept. 27th, when the minute book shows that Judge Cardozo was sitting at the regular Chambers holding the Chambers? A. August 4th.

Q. What is the first day subsequent to Sept. 29th, when he appears to have held the regular Chambers? A. Oct. 4th.

By Mr. PARSONS:

Q. Look at the minute book showing entries made by Judge Cardozo on Oct. 31st, '71, and say whether there is any entry there of the appointment of a Receiver in the matter of the Mercantile Fire Insurance Company? A. There is an entry of Oct. 31st, present, Hon. Albert Cardozo.

Q. I ask you whether there was any entry under that date, showing the appointment of a Receiver in the matter of the Mercantile Fire Insurance Company? A. There is not, sir.

Q. Is there not an entry showing that on that day Judge Cardozo

did sit at Chambers, and did grant certain orders, the minutes in reference to which appear on the book? A. Yes.

Q. How many orders does your minute book show to have been made by Judge Cardozo on that day? A. Six.

By Judge FULLERTON:

Q. Turn to 3d Nov., when the order was returnable, and see if it don't appear there or whenever the decision was made? A. Yes. The case appears there in the matter of the Mercantile Fire Insurance Company.

Q. What is the entry? A. Affidavits and order; petition filed; enters order vacating injunction, and discharging the Receiver.

Q. The order to show cause is referred to there, is it not? A. Yes, and there is an additional entry—"said papers taken by attorney to file in the County Clerk's office"; that is a memorandum left to show where the papers have gone to.

Q. That is, one class of cases would come to you at the time the original order is granted? A. Yes.

Q. Do the Judges of the Supreme Court, or either of them have any supervision of this entry book that you have produced here? A. None whatever, sir.

Q. Exercise no control over them? A. No.

Q. Did you ever know one of the Judges to examine them? A. I never did.

Q. Kept by the clerks? A. Yes.

Q. Might it not so happen that an order granted by one Judge, not regularly holding the Chambers, might get into the book of a Justice who was regularly holding the Chambers? A. Yes.

Q. In the hurry and rush of business do not papers sometimes get mislaid? A. Frequently.

Q. Have you known of instances where they could not be found at all? A. I have.

By Mr. PARSONS:

Q. Have you not already testified that in the case of the appointment of a Receiver it is usual for you to enter the fact at the time the order is granted? A. If it reaches my hands.

Q. The entry to which you have referred is made on 3d November, and is not the entry of the appointment of the Receiver, is it? A. No.

Q. Does not the entry which you have read, that very entry in the matter of the Mercantile Fire Insurance Company, show you that Judge Cardozo vacated the order appointing a Receiver, and dissolved the injunction in that case upon the argument without even reserving the case for consideration? A. It does not.

Q. Does it not show that it was entered the same day that the motion was heard? A. No; it does not show that fact.

Q. If the motion were made on Nov. 3d, then does not your entry indicate that the order granting the motion, or rather the order vaca-

ting the injunction and Receivership, was made at the time the motion was heard? A. It does not indicate that fact.

Q. Not even if the motion were in fact made on Nov. 3d, 1871? A. No.

By CHAIRMAN:

Q. What does that entry show? A. It shows simply the filing of the papers and the vacating of the injunction and discharging the Receiver.

Q. Does it show when the order was made? A. Yes, it shows it was made on 3d Nov.; the order was made on 3d Nov.

Q. Does it show when the order was made? A. Yes; vacating the Receivership—that shows 3d Nov. vacating the order.

Q. Does that mean the date when the order was made? A. Couldn't answer that, because that entry is not in my handwriting; it is in my assistant's.

Q. What does Nov. 3d mean? A. It may show that the papers were filed, so far as I can see by the minutes; these minutes are kept by Holt; it may show that the papers were filed in County Clerk's office.

Q. All those dates in that column [referring to the book], what do they show, if they show anything? A. All I can say in regard to that is this: that the papers were filed that day; whether granted that day I couldn't say.

Q. Then you make no note of the date of an order in any of your books? A. On the filing of it, that is all.

Q. You make no note of the date of the order at the time when it is granted? A. Yes.

Q. Where is that note if it is not November 3d? A. I should think that it would show that the order was granted and filed that day.

JOHN D. TOWNSEND sworn:

By MR. PARSONS:

Q. How long have you been an attorney and counsellor of the Supreme Court? A. About 13 years.

Q. Did you act for Mary Pearsall and Joanna Connor in certain proceedings before Judge Cardozo in May, 1869? A. I did.

Q. State, please, when you became retained in that proceeding? A. If you allow me to look at the Habeas Corpus I can tell you the day precisely. It was the 11th or 12th.

Q. The Habeas Corpus is dated the 13th May and was returnable 14th May. A. It was the 11th or 12th I was first retained.

Q. State what you then did? A. I saw them on same day that I was retained at the Tombs; I then drew some affidavits; two affidavits; affidavit of each; on same day I went to Special Term room in the Supreme Court and found Judge Cardozo sitting on the bench; I handed him the two affidavits; he glanced at them; he didn't read them through, and asked me to step up on the bench; I stated to him that we wanted an examination; that I wanted, on behalf of these persons, an examination; the exact words he used at that time I can better give

from a letter to the "Times," and which is printed in a book which Mr. Stickney has, and which contains a correct copy of my letter.

Q. (Mr. Stickney hands witness a book. Witness reads): "Don't you touch that case; if you do you will displease me." I replied that I had already been retained in the case, and that the women insisted that they were not guilty of the charges preferred against them, and that all they required was a hearing upon the subject. He then said that what they said was untrue. I suggested that that was the issue in the case. Judge Cardozo then said that if I took the case I need never expect any favors from him while on the bench; that I would, of course, get my legal rights when I appeared before him, but not to expect any favors from him. I replied that I was placed in a most disagreeable situation, and that I would take advice of older members of the Bar. Judge Cardozo further remarked that the women were entitled to a hearing, and should have it as soon as he was able to give it to them.

Q. Had you, prior to that, made any application for a writ of Habeas Corpus? A. I had not.

Q. State what you then did after this conversation with Judge Cardozo? A. I then consulted with Judge Mitchell, and after I had conversed with him I drew a form of petition of Habeas Corpus.

Q. Whom do you mean by Judge Mitchell? A. Ex-Judge William Mitchell, who was for many years Judge of the Supreme Court. I then applied, on the same afternoon, I think, or the following day, to Judge Sutherland, at his house, for a habeas, and he told me that he would grant the habeas, but that he must make it returnable before Judge Cardozo. I stated to him that I thought it was an improper return, and I should prefer not to make the application to him. He said it had been suggested to him by Judge Cardozo to refer that case to him, to make that return before him. On the following morning I applied to Judge Clerke, sitting regularly at Chambers He opened a drrawer, after I presented my petition, and took out a paper, and said this writ must be returned before Judge Cardozo. I made a short statement in regard to the matter. Well, he said he had promised Judge Cardozo, and it must be made returnable before him. I then said I would have it made returnable to him. It was returnable two or three days afterwards, but I cannot tell positively—but within two or three days, however.

By Member of Committee:

Q. Who granted the habeas? A. Judge Clerke. I will say that at the time I made the first application to Judge Cardozo, the woman had been then in the prison some five or six days.

By Mr. Parsons:

Q. Fix the date at which you applied to Judge Clerke and procured his allowance of the habeas? A. (Referring to paper) 13th May, 1869.

Q. On what day was it made returnable? A. 14th May, 10 o'clock,

and I will say at same time I took out a writ of *certiorari*. There were two writs, one for Mrs. Connor and one for Mrs. Pearsall.

Q. Prior to obtaining Judge Clerke's allowance of the Habeas Corpus, did you ascertain by what process the women were held in the Tombs? A. I could find nothing, with the exception of the commitment.

Q. Are the two commitments of which you speak the two commitments signed by Judge Cardozo, dated May 7, 1869. A. (Referring to papers.) These are copies of the two commitments certified by Mark Finley, Clerk of the Prison a short time ago.

Q. (Repeated). A. Yes.

Q. Did you make any effort to ascertain whether there had been any examination or affidavits or charge made by any person upon which those commitments had been granted? A. I did.

Q. Could you ascertain that anything of that kind had been made? A. I could only find these commitments.

Q. How long were those women confined prior to your obtaining your allowance of the writ from the Judge? A. They stated five or six days. The letter written to the papers will better show that.

Q. You had no personal knowledge of it? A. No.

Q. Was the 11th May the first you saw of them? A. Yes.

Q. Where were they? A. In the tombs.

Q. What took place on the return of the Habeas Corpus? A. District Attorney Garvin appeared.

Q. Was Judge Cardozo sitting? A. He was, at the Special Term, I think, in the same room where I made application to him.

Q. Do you mean the Chambers room of the Supreme Court? A. I think he was sitting in the Special Term room—now called that. The room at the head of the stairs. I won't be positive which room it was, it was so long ago.

Q. Your recollection is at fault on that point? A. Yes.

Q. What took place? A. Judge Garvin appeared to ask for an adjournment. I asked for a return, and the return was made simply of the two writs of commitments. I asked for the women's discharge on the ground that everything that was against them must be in the mind of the Judge himself, and the Judge so stated that he knew all the circumstances in connection with the case. I therefore asked for their discharge on the ground that there was nothing in the commitments sufficient to hold them. He declined to hear me on anything further than the question of adjournment. He then read or spoke at considerable length of his connection with the case and what he knew about it. When he closed his remarks I attempted to speak again for the purpose of offering exceptions to the position he had taken, and he declined to hear me. The matter was then adjourned to the 24th, I think.

Q. Adjourned by whom? A. Judge Cardozo—adjourned to the 21st at 10 o'clock. (Referring to paper.)

Q. Were the women in Court? A. I think they were; I won't say certain.

Q. What became of the women? A. They were remanded. If they were in Court they were unquestionably remanded, because I saw them on the same day.

Q. Did anything else transpire until the adjourned day, May 21, '69? A. I know of nothing.

Q. What took place then? A. I appeared in Court on that day and found Mr. Stoughton and John Graham and Judge Shea associated with District Attorney Garvin, who appeared, as I believe, as friends of the Court, and so stated. I then offered the exceptions I had taken to the ruling of the Court before—that the commitments were not sufficient to hold, and I asked for a further return, and there was no further return made. I then traversed the return, a copy of which traverse I have.

Q. Will you produce the copy if you please? A. (Produces it.)

Q. Do you know anything about the relations existing between these gentlemen and Judge Cardozo? A. Not the slightest. I have understood they were friends of the Judge.

Q. Do you know whether either of these gentlemen is frequently engaged in cases before Judge Cardozo? A. Only from hearsay.

Q. What was done with the traverse to the return, which you say you made? A. The papers were handed up to the Judge.

Q. The papers were submitted to the Judge? A. Yes.

Q. Have you ever seen them since that afternoon; have you ever made any effort to find them since that time? A. Yes, I applied at the County Clerk's office and was told that there were no papers there in connection with the matter.

Q. Have you copies of the papers of which you speak as traverse, etc.? A. I have. (Witness produces papers.) These were originally drawn in my office, and the others were copies from these. That was read in open Court. I see only a traverse in the case of Mary Pearsall.

Q. Was that the only traverse? A. Yes, sir, it was stated in Court that the traverse applied equally in both cases. (Paper read in evidence. Traverse read in evidence marked "Charge 3 C.")

Q. Are you able to state whether or not the proceeding was heard before Judge Cardozo, sitting at Chambers, or was he at "Part 3, Supreme Court?" A. Could not say.

Q. What is "Part 3, Supreme Court?" A. It is the "Special Term" room.

Q. Is it a room other than the general Chambers room? A. I don't know the pratice, sir.

Q. Was this traverse verified? A. Yes, sir.

Q. The signature does not appear to the affidavit? A. That was a copy of it.

By Judge FULLERTON:

I have listened attentively to the reading of the paper, and I believe she does not deny the fact of keeping a bawdy house.

By Mr. PARSONS:

Q. Were affidavits filed in answer to the traverse? A. None that I saw.

Q. Were any other papers submitted to the Judge with the exception of these commitments, the writ of Habeas Corpus, the return of the Warden and the notice to the District Attorney and the traverse? A. Not that I know of, except you include under that head the extraordinary speech of John Graham on that occasion.

Q. Did John Graham read from manuscript? A. yes, sir.

Q. Were any other papers present in Court, having any relation to that proceeding, while before the Judge? A. No, unless it be the Judge's own writing which he had prepared.

Q. Was anything read by Judge Cardozo from manuscript? A. Yes, sir.

Q. Do you know what become of that paper? A. No, sir.

Q. Have you ever seen it since? A. Never, except in the newspapers.

Q. Did you ever make any application for the speech of Mr. Graham? A. I had the Stenographer give me a copy of it.

Q. And that is all that you have? A. Yes.

Q. What become of the women on the submission of the papers? A. They were remanded to prison.

Q. State to what day? A. The 25th, I think.

Q. What then took place? A. Nothing, in my presence. That was the last time I was before Judge Cardozo, with the exception of what I have already stated.

Q. How did the proceeding terminate? A. I can only answer from heresay; no personal knowledge. I received a note immediately after this had taken place in Court, from Judge Cardozo, stating that he was very sorry I had not been heard in answer to John Graham, and that if I would fix a day he would give me the opportunity.

Q. Have you the note? A. I have looked for it, but have not been able to find it. He stated that he would sit some other day when I could respond to Mr. Graham, which I declined.

Q. Were you heard on the return? A. I was not.

Q. Why not? A. After Mr. Graham had done speaking, Judge Cardozo immediately went on to make some remarks, and supposing that I would be heard as soon as he had terminated, I waited, but at the close of the remarks Judge Cardozo said: "Adjourn the Court," and the Crier immediately adjourned the Court. At the close of Mr. Graham's speech I had risen to reply.

Q. Were the women, as you learned on the 26th May, discharged? (See post.) A. I will also say that I received a note, or message, I don't know which it was, asking me, on the same afternoon, whether the disposition of discharging them under the contempt proceeding, and holding to bail on the bawdy-house business, would be satisfactory to me. I was at that time engaged in a reference. A Clerk came in

with the message, and I cannot say what answer I did make. I think I did not send any, but left the matter entirely in his hands.

Q. Answer, now, whether you had learned that on the 26th May they were discharged? A. I learned from the women that they were back and forth from the District Attorney's office for some time, and finally one was held to bail in a small amount, and the other was entirely discharged.

Q. Have you any knowledge on that subject, except the statement of the women? A. I have not.

Q. Where did you see the women? Were they still in the Tombs, or had they been discharged? A. After they were discharged they came to my office.

Q. On what day did they come to your office? A. I could not give the exact date. It was between the 27th and 29th May.

Q. Down to the time your connection with the proceeding terminated, had you ever been able to see, or was it stated on either occasion when you were before Judge Cardozo, that there had been any charge made by any person against either of these women of any kind? A. I have not, sir.

By Judge FULLERTON:

Q. Had you any connection with the case of McGraw against McGraw? A. No, sir.

Q. You understood that there was such a case? A. Not until I had seen the women in person. I understood there had been some order made by the Court in reference to Mrs. McGraw, and these women had been accused of or charged with aiding the mother in taking from the jurisdiction of the Court the infant child.

Q. Did you not learn that the case was a divorce suit? A. No, sir.

Q. Did you hear that the order was in relation to the custody of a female child of tender years? A. Yes.

Q. How old; A. Don't know.

Q. An action between husband and wife, was it not? A. Yes, sir.

Q. Did you not understand that these females, Pearsall and O'Connor, were sisters of Mrs. McGraw? A. Yes.

Q. Did you not learn that there was a divorce suit? A. I have subsequently heard it.

Q. Did you not at that time? A. Well, possibly.

Q. Did not Judge Cardozo tell you that all he desired was to extricate that child from the association of these women? A. At what time?

Q. At the time you had the conversation? A. No, sir.

Q. Did he not tell you that these women were engaged in keeping a house of ill-fame? A. I knew that myself.

Q. Don't you remember that he said so? A. I do not; it's very possible that he may have.

Q. Don't you know that he told you those women were taking that child to that house? A. No, sir.

Q. Did he not state so distinctly? A. He said that in his speech afterwards, in the written statement he made.

Q. Was it not the decision? A. No, sir; there was no determination about it.

Q. Did you not get a copy of the decision of the Judge? A. No, sir; there was no decision.

Q. Was not that a decision remanding them? A. Yes, sir.

Q. Did not Judge Cardozo tell you that the child had been taken to the bawdy house? A. I could not swear positively, but think he did not.

Q. Where did you understand the mother lived? A. Never knew.

Q. Did you not afterwards learn? A. Afterwards I understood that she had been there, but never lived there.

Q Did you not hear of the fact of her taking the child there? A. Yes, subsequently.

Q. Did not Judge Cardozo tell you so? A. No, sir.

Q. Did you understand from Judge Cardozo what the contempt was for which these people were committed? A. I did at the time he made the oration.

Q. Did you not learn before that? A. No, except through the girls; the girls of the place told me of their sister, and that she had been charged with coming to their house.

Q. Then the child was not forthcoming? A. The child was not forthcoming.

Q. And these two sisters, Pearsall and O'Conner, were charged with having aided to conceal it? A. I don't know; they only suspected so.

Q. When Judge Cardozo called you up, did he not explain this matter to you? A. He did not.

Q. Did he not tell you that these women had conspired to take the child from the jurisdiction of this Court? A. No, sir.

Q Did you not learn from him, during that conversation, that these three people, Pearsall, O'Connor, and Mrs. McGraw, had been charged with taking that child from the jurisdiction of that Court? A. I can't say.

Q. Did not Judge Cardozo say, that his only object was to protect this child from the influence of these women? A. No, sir; the first I heard him say in regard to that, was the time of the return of the writ, when he made that speech that was published in the paper.

Q. What did Judge Cardozo then say? Is that what you call the oration? A. No, sir; the oration took place later in the proceedings.

Q. I understood you to say that those women were afterwards discharged? When you saw them, did not they say that their liberty had been granted upon a promise to make some efforts to restore this child? A. Never told me.

Q. Never intimated that they had promised to use their best efforts to restore her? A. No, sir.

Q. I understood you to say that some papers, the traverse, &c., were handed to the crier; do you know that any papers came into the

hands of the Judge? A. They were handed to the Clerk, who was the crier at the time, and I suppose, of course, went to the Judge.

Q. They went into the hands of the crier of the Court? A. I think so. I handed them to the person who took the papers, who was an officer of the Court.

Q. Why did you not hand them to the Clerk of the Court? A. I do very often hand up papers in that way, and that may be the reason why I did so then.

Q. You would suppose the Clerk would be the natural person? A. The papers were taken, the case was not determined, and I suppose, of course, they went into the hands of the Judge.

Q. When was it you received a note from Judge Cardozo? A. I think the same afternoon?

Q. Will you produce it? A. I don't know that I can find it.

Q. It was to the effect that you should be heard? A. Yes.

Q. Regretting that you had not had the opportunity? A. Yes, sir.

Q. Now, on the day when you say you were not heard, did you not make some observations to the Court? A. A gentleman who had been connected with McGraw *agst.* McGraw, got up and made some remarks, explaining his position. I got up and made an explanation, which I think the papers give—a fair statement of it—as well as the remarks of the counsel who preceded me.

Q. How long did you occupy? A. About six minutes.

Q. Who did you succeed? A. I don't know the gentleman; he is either associated with, or has an office in connection with Mr. Shafer.

Q. Didn't Mr. Graham make any observations? A. I think not.

Q. Are you sure? A. I think nothing had been said in the case.

Q. Had not Mr. Graham been speaking for some time? A. No, sir.

Q. Are you sure? A. Yes, I am sure.

Q. You made some explanation? A. Yes; because I perceived these remarks were made to place me in a position, which I did not wish to occupy.

Q. Had not the case been called? A. Perhaps so.

Q. Then your observations were in that case? A. They were; but not in connection with the matter; that is in reference to these women.

Q. How did it happen that you felt yourself called upon to make this explanation or apology? A. It was an explanation, but not an apology.

Q. An explanation of what? A. An explanation of my position.

Q. Who succeeced you? A. Then, I think, there was an examination of one woman.

Q. Was she the only one examined; one of them was examined? A. Yes; in reference to whether she had made any effort to find the child, she stated that she had been imprisoned.

Q. Was she sworn? A. I think so.

Q. Was any one else examined? A. No, sir.

Q. Then what took place? A. Then Mr. Graham came out and read a long document, very vituperative as regards me, and very satisfactory as regards himself, I suppose.

Q. At the conclusion of that, what took place? A. I rose to reply, and Judge Cardozo, without noticing me, went on to make his remarks.

Q. Will you say that Judge Cardozo saw you rise? A. I have not the slightest doubt that he did.

Q. Will you say positively that he did? A. No; I will not say positively; I was directly in front of him.

Q. The Court was then adjourned? A. No, sir; in session.

Q. Did you address the Court? A. No, sir; I don't suppose that ten seconds, or five seconds intervened, between John Graham's speech and Judge Cardozo's remarks.

Q. Did you request Judge Cardozo, on that day, to hear you? A. No, sir.

Q. The only indication that you gave, of your desire to be heard, was your rising? A. Yes, sir; I had been taking notes of John Graham's speech; I had been standing in front of Judge Cardozo.

Q. But you did not request him to hear you? A. No, sir, I did not.

Q. How long after that was it that you received a note from Judge Cardozo? A. If you will permit me to explain; I stated loud enough for Judge Garvin to hear me, that as I could not be heard in Court—as I had been choked off in Court—I should apply to the papers.

Q. You said that loud enough for Judge Garvin to hear you? A. Yes, sir.

Q. Did not Judge Garvin express his surprise at your not being heard; or ask how you had been choked off? A. No, sir.

Q. Did he not tell you he did not see how you had been choked off? A. No, sir.

Q. How long after that did you receive Judge Cardozo's letter? A. Perhaps within two hours.

Q. Repeat the substance of that note. A. It was to the effect that he had heard that I had been dissatisfied at his not giving me an opportunity to be heard, in answer to John Graham, and that he had no intention of preventing my being heard; and then, if I would state some hour (not that day) that I should have that opportunity.

Q. Did you avail yourself of that offer? A. No, sir, I did not.

Q. What reply did you return? A. I made none.

Q. And the matter there dropped? A. Yes, sir.

Q. You went to the newspapers? A. I did, sir.

Q. Did not that note say, in substance, that Judge Cardozo nad not observed that you wished to reply? A. Very possibly.

Q. You preserved the newspapers' account of Judge Cardozo's speech? A. Yes, sir.

Q. You preserved all the newspaper articles? A. I believe all.

Q. Did you send that letter to the newspapers? A. No, sir.

[Witness promises to make search for the letter.]

Q. Will you repeat again what Justice Cardozo said to you when he called you up there to him? I understood you to say that Justice Cardozo told you not to touch the case? A. Yes.

Q. Did he not give you the reason? A. Nothing, sir.

Q. Did he not give you the reason? A. Nothing but the general intimation, but it sounded more like a command; and he said I had better not touch the case.

Q. What did the Judge give you as a reason, or why did he suggest that course to you? A. I don't know his reason. It seemed to me a demand—more like a peremptory order.

Q. Did he not tell you that these women were engaged in keeping a house of ill-fame? A. No, sir.

Q. Did they tell you? A. I heard from them that they had such a house in Crosby street. I did not see them until after I was retained by a gentleman who came to my office.

Q. Do you know where he lives? A. No, sir; he was a Southern man, one of their friends, I suppose.

Q. Will you say that there was not an affidavit presented to Judge Cardozo? A. Certainly not.

Q. Did you ever hear of any affidavit? A. No, sir.

Q. How do you know that there was none presented? A. I believe so, because I made a demand for anything there was, and the only return that was made were the two commitments, precisely what I was looking for.

Q. Have you frequently practiced before Judge Cardozo? A. Never but twice since that time.

Q. You have been twice? A. Yes, once within a month.

By Mr. PARSONS:

Q. Were the papers you said to Judge Cardozo you should apply to the newspapers? A. Yes, sir.

Q. You have spoken of a paper from which Judge Cardozo read, called by you an oration, and by Judge Fullerton a decision; had that paper been prepared before the hearing upon the return to the *habeas corpus?* A. I don't know.

Q. Was it prepared by the Judge during the hearing. A. I do not know.

Q. And as read by him at the time, was it complete? A. Yes, sir; complete.

Q. What was the length of time occupied in reading it? A. About fifteen minutes.

Q. While Mr. Graham was making his statement, or reading it, was Judge Cardozo paying attention or engaged in writing? A. I could not say.

Q. Did you notice that he was writing anything? A. I did not. I was myself engaged in taking notes at the time Mr. Graham was speaking.

Q. Did Judge Cardozo state how he had learned that these women

had been assisting in promoting the escape from the jurisdiction of the Court of this infant? A. No, sir.

Q. Did he state in what way he had learned; A. No, except as I have testified.

Q. Did he allude, on the occasion of that speech, or at any other time, to any affidavit or charge made by any person against these two women? A. No, sir.

Q. When motions are heard by a Judge at Chambers, how, ordinarily, do the papers reach the Judge? A. The Clerk, who stands near him, takes them and hands them to him.

Q. Is that person to whom you handed them the official Clerk? A. I don't know exactly what position he holds.

Q. He is the Clerk who sits there? A. No, sir.

Q. Was it the person holding that position that you gave the traverse to? A. Yes, sir. And now I remember two other papers also. They were the affidavits which occurred in that matter, and which Mr. Graham insisted on my reading again, and in open Court.

Q. Were they handed to the Crier to be handed to the Judge? A. They were handed to the officer of the Court.

By Mr. NILES:

Q. This man was inside the railing? A. Yes, sir. These affidavits were those I first submitted to Judge Cardozo when I took the *habeas corpus* out.

By Mr. PARSONS:

Q. Do you know, either personally or by reputation, an attorney or counsellor at law of the Supreme Court in this city called Mr. Thomas C. Fields? A. Yes, sir; I know him very slightly. I know him to be an attorney and counsellor.

Q. Do you know anything, either personally or by reputation, of the relations which exist between him and Judge Cardozo? A. I do not, sir.

Q. Have you ever been in Mr. Field's office? A. Have not, sir.

Q. Have you ever been in Mr. Gratz Nathan's office? A. I don't know.

Q. Do you know whether Mr. Gratz Nathan and Mr. Fields occupy offices together? A. I do not.

Q. I judge that you know nothing whatever as to the arrangements of their offices, or as to the relations which subsist either between them or between them and Judge Cardozo? A. I do not, sir.

WITNESS to COMMITTEE:

I desire to ask you, gentlemen, whether you propose to bring up any matters which are not brought forward by the Bar Association?

By Mr. NILES:

I don't understand that the Bar Association come here as exclusive accusers. We are directed simply to find out whether the Judges have done anything which renders them liable to punishment through

the resolutions. We find the Bar Association has more to say about it than anybody else.

By Judge FULLERTON:

I suppose it is in pursuance of the arrangements that the charges which were to be substantiated by evidence must be reduced to writing and a copy presented to us.

By Mr. NILES:

That was what I was proceeding to say. We desire charges, if any are to be made, reduced to writing and made specific as may be, in order that no injustice be done anybody by surprise. Of course you understand, Judge Fullerton, that if I am right, we are not justified, under the resolution of instruction, in excluding anybody.

WITNESS:

The reason I made the remark is, that there is one cause in which it seems impossible to get justice. The charges under that case I will reduce to writing, just as soon as I possibly can.

By Mr. VAN COTT:

I fully concur with Judge Fullerton with regard to the order of the proceedings, and also with Mr. Niles, that we claim no monopoly; but I think that while this investigation was going on there should not have been any interruption of this kind.

By Mr. Niles:

We do not wish to interrupt the proceedings. If any charges are to be made, they should be laid on our table in proper form.

By Judge FULLERTON:

I don't object to this complaint, and I don't want to be understood to object to any charges. On the contrary, I want them made, and if any other gentleman has cause of complaint, I wish him brought forward. We desire the fullest investigation, but we want it laid before us, so that we can be prepared to meet and to refute it, and it should be given to us to-day. I don't want the gentleman to come here with his charge and evidence to sustain it without giving us, until that time, an opportunity of knowing what is, in order that we may meet it.

WITNESS:

I should like to know if it is merely to draw up a statement of the case. Here are other gentlemen interested, besides myself, and it will take some time to present a charge which has taken two years to accumulate. I think, however, I could be prepared by to-morrow.

By Judge FULLERTON:

To-morrow is Saturday, and I don't know how long this Committee intends to sit.

By Mr. NILES:

I would suggest we are not at liberty to say that anything shall not be

taken up which is laid upon our table, but in any case we shall take good care that it is not so done that injustice will result to anybody.

By Judge CARDOZO:

I don't desire to evade the charge; I am ready to meet it; I only ask that it may be laid on the table to-day.

WITNESS:

I will state it if the Committee please.

Mr. NILES:

The Committee will do all we can; we cannot promise to take up charges which come too late.

By Judge CARDOZO:

Will you permit me to say that if they are preferred too late, an injustice is done me, because they cannot be examined, and I want them examined.

By Mr. HILL:

I move that this be referred to executive session.

Mr. NILES:

The Committee will determine this matter, and notify Mr. Townsend

ALBERT H. NICOLAY, being sworn and examined by Mr. Parsons, testified as follows:

Q. What is your business, and where do you carry it on? A. Selling stocks and bonds at public auction, stock-board and private sale.

Q. Was that your business on the 30th October, 1871? A. It was, sir.

Q. Did you have for sale on the 30th October, 1871, ten shares of the stock of the Mercantile Fire Insurance Company? A. Yes, sir.

Q. Did any person call upon you with reference to the purchase of it, and if so, state what took place? A. In regard to the purchase, the preliminaries were between my son and the buyer; I was only present on the following day, when the sale was consummated.

Q. About what time on the following day? A. It was consummated, as near as I should judge, between ten and half-past.

Q. What did he pay? A. $375 for ten shares; he paid 75 per cent. on a par value of $50 per share.

Q. Did more than one person come to the office? A. There were two there when I was present.

Q. Please describe them? A. One was a tall gentleman, as near as I can recollect, with a black mustache; and the other was short, with a sandy beard.

Q. Had you ever seen either of them since? A. Not since that time.

Q. Did either give their names? A. The tall one did, reluctantly, when the question was asked.

Q. State what you mean by "reluctantly?" A. My son asked him his name and address, and he hesitated to give the name, and I spoke

up and said we must know; he then gave the name of "Owens," I think, and his adress somewhere in Williamsburgh. My son has it in the book, outside.

Q. Was the certificate delivered on the same occasion? A. It was, sir.

Q. And what other paper was delivered with it? A. A power of attorney to transfer the stock.

Q. How long had the stock been in your office for sale? A. It may have been a week or two.

Q. And when it came to the office was there with the certificate a blank power of attorney, executed, to be filled in with the name of the purchaser of the stock? A. There was, sir.

ALBERT H. NICOLAY, Jr., being duly sworn, and examined by Mr. Parsons, testified as follows:

Q. Are you the son of Albert H. Nicolay, broker and commission dealer in stocks and bonds; are you associated in business with him? A. Yes, sir.

Q. Are you a partner? A. No, sir, merely a clerk.

Q. Where is the office? A. 43 Pine street.

Q. Has been since what time? A. Since 1866.

Q. Did your father have for sale, on October 30th, 1871, any shares of the Mercantile Fire Insurance Company? A. At that time we had ten shares for sale; yes, sir.

Q. Did any person or persons call at your father's office, and if so, about what hour, in reference to the purchase of them? A. At about 4 o'clock, I think, two gentlemen called at our office and mentioned some insurance stocks they wished to purchase. I don't recall all of them, but among them were the "Mercantile," the "New Amsterdam" and the "Niagara." I told him we had a little lot of "Mercantile" which we would sell at 75.

Q. Was anything said about wishing to buy a smaller number of shares? A. He asked me if we could sell part of it.

Q. Did he say how much of it he was willing to take. A. No, sir, he did not.

Q. Was anything said about the companies the stock of which he desired to purchase, or anything about the Chicago fire in that connection? A. No, I think not.

Q. Do you know whether the two Companies, "New Amsterdam" and "Niagara," and also the "Mercantile," had sustained losses by the Chicago fire? A. Yes, sir, they had.

Q. Did these persons return, and if so, when? A. They returned on the following morning about half-past ten o'clock—not the same parties; one of them with another gentleman, returned, and said he would take the stock.

Q. Did he take it? A. Yes, sir, and paid for it with one bill of $500, not by a check, but with money.

Q. Did he state his name? A. Yes, sir; it was William L. H.

Owens; I have it in the book here. The address was 69 South Fifth street, Brooklyn, E. D. I gave him the difference in money. I thought they acted kind of queer; so I went to the bank and had the bill changed, instead of giving him a check for the difference.

Q. Did you then see three persons who acted in connection with this transaction? A. Yes; there was one person who called again on the second day. The tall person was the buyer of the stock.

Q. Describe the other person, the one who did *not* return on the second day? A. He looked very much in face like the tall gentleman who called on the second day; so much so, that at the time I thought they were brothers. I did not notice particularly the appearance of the other one.

Q. Do you mean the second one who called with the first? A. Yes.

Q. Have you ever seen either of those three persons before or since? A. I think I have seen them before, but not since.

JOHN W. STERLING, being duly sworn, and examined by Mr. Parsons, testified as follows:

Q. Were you, in September and October, 1869, a member of the firm of Field & Shearman? A. I was, sir.

Q. For how long, prior to that time? A. Since January 1st, 1869.

Q. Do you remember the gold litigation, which originated in the office of Field & Shearman in September, 1869? A. I do, sir.

Q. Where, at that period, did you make your individual office. A. My individual office was 4 Pine street.

Q. Where was the individual office of Mr. Thomas G. Shearman? A. He was there a portion of the time, and a portion of the time at his office, in the Erie Railway building, corner of Eighth avenue and 23d street.

Q. Were Jay Gould, President, and James Fisk, Jr., Treasurer, of the Erie Railway Company at that time? A. I am not certain, but that is my impression.

Q. They acted as such, did they not? A. I believe they did.

Q. Did you not frequently see them in connection with the Erie Railway Company? A. Certainly.

Q. Was it not at their office that Mr. Shearman was in the habit of doing business? A. It was in that building.

Q. Who composed, in September and October, 1869, the firm of Field & Shearman? A. Mr. Dudley Field, Thomas G. Shearman, and myself, as attorneys, and Mr. David Dudley Field as counsel to the firm.

Q. Did you mean that by the arrangement he was not independent of the partnership? The partnership consisted of D. D. Field, Dudley Field, Mr. Shearman, and yourself? A. I did, sir.

Q. Where was Mr. D. D. Field at the commencement of the gold litigation? A. I can't say; but my impression is that he was at his country seat at Stockbridge, in Connecticut.

Q. Assuming "Black Friday" to have been September 24, when did Mr. D. D. Field first appear at his office, or present himself upon the field of action? A. I can't exactly remember, but it was some time in the following week.

Q. Do you remember the commencement of a suit, "Osborn *agst.* The Gold Exchange Bank?" A. I think that suit was commenced on 29th September.

Q. Do you remember the fact of the commencement of that suit? A. I can remember the fact; I knew that such a suit was commenced.

Q. Where were you about that time? A. I was absent about two weeks previous till the 25th, 26th, or 27th of September.

Q. And you returned as early as the 27th? A. I returned either on the Saturday or the Monday succeeding "Black Friday."

Q. Was that, assuming "Black Friday" to have been either the 24th, 25th, or 27th of September? A. Yes, I think so.

Q. When you reached New York did you hear or learn of the panic consequent upon "Black Friday?" A. I did, sir.

Q. Was not D. D. Field in New York, and in the office, or did he subsequently arrive? A. I think he arrived subsequently.

Q. State, according to your best recollection, which it was? A. I cannot; it is a long time ago, and it is impossible for me to recollect it.

Q. Was he present in connection with the preparation of the papers, in the Osborne suit? A. I think not, sir; I think Mr. Shearman had everything to do with it As far as I am informed, both Mr. D. D. Field and Mr. Dudley Field were absent until the week following, and I am quite positive Mr. Shearman prepared the complaint, and conducted the commencement of almost all of these proceedings, taking charge of all of them in our office throughout. I mean through September and October.

Q. Was Mr. Field in consultation or participating in the preparation of these papers? A. I can't say; I was not present at any consultation. My particular department was attending to suits in the office. I had just returned from my vacation, and was obliged to prepare them for trial. And also to prepare the papers for service in these gold suits; so, in reference to any conversation, I do not know personally.

Q. Were you, however, at the office, 4 Pine street, from the time of your return, through the remainder of September and through October? A. Yes, I think I was there almost every day.

Q. You say you were occupied almost all the time; where did you then transact business? A. Partly at the office, 4 Pine street, partly at my own house in 9th street, and partly at Mr. Shearman's room, in the Erie Railway building.

Q. Did the firm of Field & Shearman have any other office as a firm, than 4 Pine street? A. They did not, sir.

Q. Do you know Charles J. Osborne? A. I do not, sir; only by sight.

Q. Was Mr. Osborne at No. 4 Pine street, during the early portion of the time occupied by these gold litigations? A. I can't say; I don't remember seeing him there.

Q. Neither during September nor October, down to October 9? A. I can't say positively.

Q. Do you remember the fact that orders of injunction and orders appointing Receivers in those litigations were obtained at the close of September or in the early part of October, 1869? A. I do.

Q. Do you remember that undertakings were executed in these proceedings? A. I do.

Q. Did you attend to the preparation and commencement of these suits, and the execution of the undertakings? A. I can't say that I did, but I superintended part of the work.

Q. Will you state whether Mr. Frederick A. Lane was at the office during the preparation of the initiatory proceedings in these suits? A. I don't remember seeing him except on one occasion, when he came in, I think in the afternoon of the day preceding the substitution of Newell, Denman & Prentiss, and I think also Barretts & Redfield for us, as attorneys in these suits.

Q. Do you remember that Mr. Lane was surety in a number of these undertakings? A. My impression is that he was.

Q. Where were such undertakings executed? A. I can't say, sir.

Q. Did you not give instructions in regard to these undertakings? A. I think our managing clerk attended to that.

Q. Don't you remember the circumstance that Mr. Lane was a surety? A. I have said so, sir.

Q. Don't you remember how the execution was procured? A. I do not, sir.

Q. Did you give no direction in relation to it? A. I don't think I did, sir.

Q. Who is the managing clerk? A. Edward Ensign.

Q. He is the Notary Public before whom the undertakings were executed? A. Yes, sir.

Q. Don't you remember giving any instructions to him? A. No, sir, I do not. It is a very common thing for the managing clerk to have charge of these matters, and we never think of giving special directions. A person in such a capacity would probably well understand the proper method.

Q Some of these undertakings were executed before, and the acknowledgments taken by Mortimer Smith; did you ever hear of him? A. Yes.

Q. Did he take these acknowledgments? A. I think he did.

Q. Have you any doubt? A. I have not any.

Q. What was his connection with the Erie Railway Company? A. I think assistant secretary.

Q. Where is his office? A. Erie Railway building.

Q. Do you know him to be a Notary Public? A. I do not positively; I know he has acted as such several times.

Q. Do you know the firm of Osborne & Carnac, of which Mr. Osborne is a member? A. I do, sir.

Q. Which member of that firm do you know; either of them? A. I think I should know them if I should see them.

Q. Had Field & Shearman, to your knowledge, ever acted as attorneys for either Charles J. Osborne or his firm, prior to September 29th, 1869? A. I don't remember that we ever brought any suit; but don't know.

Q. I ask you whether, to your knowledge, the firm of Field & Shearman ever acted as attorneys for Osborne or his firm, prior to September 29th, 1869? A. Not to my own personal knowledge.

Q. Had they, to your knowledge, acted as counsel? A. Not to my own personal knowledge.

Q. Do you know Benjamin F. Carver and W. Carver? A. I know Benjamin F. Carver.

Q. When did you first become acquainted with him? A. I can't be positive, but think some time in 1869.

Q. Was it in connection with the gold litigation? A. I think it was prior.

Q. Had the firm of Field & Shearman acted as attorneys for him or his firm, so far as you know? A. My knowledge only extends to January, 1869.

Q. Were you not in the employ of Field & Shearman immediately previous to your becoming a partner? A. I had been, but not immediately previous.

Q. What was the interval? A. I should say about eight months. I had only been clerk in their office for six or seven months previous.

Q. As far as you know, had either Wm. M. Lloyd or Charles J. Hamilton, or the firm consisting of these gentlemen, ever been clients of Field & Shearman? A. I don't remember any suit that was brought for them during that interval.

Q. Have you any recollection whether these gentlemen were clients of Field & Shearman prior to 29th September, 1869? A. I have no personal knowledge.

Q. Did you see either of these gentlemen in the office of Field & Shearman in connection with that gold litigation, or at all during the last days of September, or in the early part of October, 1869? A. I saw them frequently.

Q. Commencing when? A. I could not say.

Q. During that interval, did you see any of these other gentlemen in the office of Field & Shearman? A. Yes.

Q. Who? A. Mr. Carver.

Q. Who else? A. Mr. Hamilton.

Q. Who else? A. And one of the firm of Osborne & Carnac, I don't know which.

Q. Did they call on more than one occasion? A. I think several times.

Q. Was the first occasion on the day when the complaints in the suits brought in their names were verified? A. I cannot fix the dates, but I think not.

Q. Do you know Ben. E. Smith, Jr.? A. I don't recall any gentleman of that name at present.

Q. Do you recall the circumstance, that in the original summons and complaint, in the suit of "Osborne *agst.* the Gold Exchange Bank," the name of Charles J Osborne in the title is written over the erasure of Ben. E. Smith, Jr., as plaintiff? A. I do not, sir.

Q. Will you look at the paper now handed you, and state whether it is not the copy, summons and complaint in the Osborne suit, prepared for service and served? A. I cannot say that this is the identical paper that was served, but I presume this is a copy of the original summons and complaint.

Q. And prepared in your office? A. Yes, sir.

Q. State now, if you please, whether the summons, forming part of that paper, was not prepared originally with the name of the plaintiff being omitted? A. I can't say, sir.

Q. Don't you notice that the name of the plaintiff is in a different handwriting? A. Yes, sir.

Q. In whose handwriting is the body of the paper? A. In the handwriting of Wm. Malloy.

Q. Who is Wm. Malloy? A. He is a copyist employed in our office.

Q. In whose handwriting is the name of the plaintiff? A. I think in the handwriting of Edward Ensign, Managing Clerk and Notary Public in our office.

Q. Will you look at the paper which has just been handed to you, and state whether the complaint down to and including the words, "Field and Shearman, Plaintiff's Attorneys," is not in one handwriting, and the affiidavit of verification of the complaint and the affidavit of Charles J. Osborne attached in a different handwriting, the affidavit of verification and the affidavit of Osborne being a copy by a manifold press from the original? A. It is so, and it is a very usual thing.

Q. Now state, if you please, in whose handwriting are the affidavit of verification and the affidavit attached of Osborne? A. The body of the verification is in William Malloy's handwriting, filled up in Mr. Ensign's handwriting. The body of the affidavit attached to the complaint is in Wm. Malloy's handwriting, and is filled up in my handwriting.

Q. Now state in whose handwriting is the body of the complaint itself? A. Ensign's. I state that the word "complaint" in the margin is in my handwriting.

Q. Will you look at the copy of the order in the suit in the Supreme Court of John W. Gillespie against Wm. Neilson, as President of the New York Stock Exchange and others, and state whether it is

not a copy by a manifold press, of an order, the original, or copy, from which it was taken, being also in the handwriting of Malloy, of whom you have spoken as a clerk in your office? A. This copy shown me is in Mr. Malloy's handwriting.

Q. Do you know where that copy was made? A. I don't know of my own knowledge.

Q. Where did Field & Shearman copy papers? A. In their office.

Q. Can you explain how it happens that the body of the complaint is in the handwriting of a man who is understood as being in Field & Shearman's employ, and yet the endorsement on the back of the paper shows that it came from the office of Barretts & Redfield? A. I cannot, unless as a convenience to them; I don't know that they had any press, and they may have sent the paper to us to be copied by the manifold press.

Q. But if this paper is in the handwriting of Malloy, must it not have been copied in the office of Field & Shearman? A. It must, of course, be so.

Q. Did Field & Shearman copy papers for Barretts & Redfield? A. Not as a usual thing.

Q. Do you ever remember any one instance of their doing so? A. Yes, I think I do.

Q. Was it not in connection with the gold litigations? A. I can't say whether it was or not.

Q. Have you any recollection of Field & Shearman ever copying Barretts & Redfield's papers, except in connection with the gold litigation? A. I have no distinct recollection.

(Paper marked by Chairman "L. B. P." for indentification, February 23d, 1872.)

Q. Will you look at the paper now produced to you, and state whether it is not a copy of the summons and complaint in the suit of Willard against Neilson, as the President of the New York Stock Exchange; and whether it does not consist of the printed summons and complaint, the name of the plaintiff being filled in in writing, as also the signature to the affidavit, the name of the plaintiff in the affidavit of verification, and the name of the notary, the date of the summons being September 30th, 1869? A. Yes, sir; it appears to be so.

Q. Is not that a paper which came from your office? A. It did, sir.

Q. And was not the affidavit of verification to the complaint as printed--the affidavit also being printed—made on 30th of September, 1869, before Edward Ensign, whom you describe as Notary Public and managing clerk in your office? A. Yes.

Q. Now state, if you please, to the Committee, where the printed portion of this paper was printed? A. My impression is that that was printed at the office of John Polhemus; of course, I could not swear to the type; but that is my impression, from the appearance of the type.

Q. Was there any other printer who did printing for Field & Shearman at that time? A. Yes, sir.

Q. Who? A. I think I personally procured some printing to be done at the office of the Erie Railway Company, as a personal convenience to myself.

Q. Was not this printing procured at the office of the Erie Railway Company; can you tell, by looking at the paper handed you, whether it was? A. I have already stated.

Q. Are you quite sure, from examining it? A. I believe they have a different type at the Erie Railway office from it; my remembrance is that they have.

Q. When was printed the printed portion of this complaint? A. I can't state when exactly.

Q. Was it prior to September 30, if the original was signed on the 30th of September? A. The original may have been a written complaint.

Q. Does not the verification bear date the 30th of September? A. The copy may have been printed after the original was signed; if I could see the original complaint, I could tell.

Q. Don't you remember that the original of that summons and complaint are in print, except the portions which are here in writing? A. I have no distinct recollection.

Q. Assuming that to be so, that the original complaint is in print, this being a duplicate, and that the verification was, on September 30th, when then, would it have been printed? A. Of course, either on the 30th of September or previous to that day.

Q. Do you remember that on September 29th, 1869, in the suit by Osborne against the Gold Exchange Bank, an order was obtained from Judge Cardozo, appointing a Receiver of the Gold Exchange Bank? A. I remember such an order was obtained.

Q. Who drew the original order? A. My impression is that Mr. Thomas G. Shearman did.

Q. Do you remember who prepared the copy that afterwards became the original? A. I cannot without the paper.

Q. Do you remember the fact of that paper being prepared and of its leaving the office to be signed or obtained from Judge Cardozo? A. I can't say that I do remember; I've not the slightest doubt of it. I can't remember the exact point of time.

Q. Do you remember a conversation in the office, that such an order was to be procured from Judge Cardozo? A. I remember that there was a conversation of that kind, but you must remember that I was up day and night during this litigation, and it is impossible, at this distance of time, to remember one instance.

Q. Did you take the order to Judge Cardozo? A. I did not, sir.

Q. Who left your office for the purpose of procuring that order? A. I cannot state--don't remember.

Q. Was it Mr. Shearman? A. I think not. If it was any one from our office it was Mr. Shearman, but I don't recollect whether Mr.

Shearman obtained the order, or some one else, as I was not present at the time.

Q. Were you present when Judge Cardozo granted the order? A. I was not, sir.

Q. Was there any person from your office, other than Mr. Shearman, who took that order to Judge Cardozo? A. I don't think there was.

Q. Then, would your recollection be that it was taken by Mr. Shearman to Judge Cardozo? A. If it was taken by any one from our office, it was taken by Shearman.

Q. Was it taken by any one not connected with your office? A. I think so.

Q. Was it taken by Mr. Aaron I. Vanderpoel? A. That is my impression.

Q. Do you know how it happened that Mr. Aaron I. Vanderpoel took this order to Judge Cardozo? A. I don't, unless it was as a favor to Mr. Shearman.

Q. Mr. Shearman was in the habit of obtaining orders on *ex parte* applications to Judges? A. He was, sir.

Q. You had done so also, had you not? A. Yes, sir.

Q. Had Mr. David Dudley Field? A. I don't remember that he applied for an *ex parte* order.

Q. Then the only persons who made applications for *ex parte* orders were yourself and Mr. Shearman? A. And Mr. Dudley Field.

Q. Do you know how it happened that neither yourself nor Mr. Shearman applied to Judge Cardozo to obtain that order? A. I do not. Mr. Shearman is the only person who can tell you.

Q. Was Mr. Shearman ever at the office, 4 Pine street? A. Partly there and partly in his office at the Erie Railway Company.

Q. Did you see him there (4 Pine street) during that interval? A. I believe every day.

Q. There seems to be some uncertainty whether Mr. Vanderpoel was a member of the firm of Brown, Hall & Vanderpoel? A. I think he was.

Q. Have you any doubt on that subject? A. I have no doubt of the fact.

Q. And was Mr. A. Oakey Hall, Mayor of the city of New York that time a member of the firm? A. I don't know whether he was Mayor at that time, but I think he was a member of the firm.

Q. Do you know whether Mr. Augustus L. Brown, who was appointed by Judge Cardozo Receiver of the "Gold Exchange Bank," was the senior member of that firm? A. I do not know positively.

Q. What is your opinion? A. He was the senior member of that firm.

Q. And had been for what length of time? A. I can't state, because I do not know. Was not in New York previous to 1867.

Q. Was Mr. Brown at the office of Field & Shearman shortly prior to September 30th, 1869? A. I don't recollect.

Q. Do you remember anybody being sent, or leaving your office, for

the purpose of going to Brown, Hall & Vanderpoel about it? A. No, sir; I do not.

Q. Was not much of the work which Mr. Shearman did in connection with the preparation of papers in the Gold Exchange Bank litigations done at the Erie office? A. A great part of it done at his office in the Erie building.

Q. Do you remember that orders of injunction and Receivership were also granted by Judge Cardozo in the cases of Carver, and Lloyd & Hamilton against the Gold Exchange Bank? A. I do, sir.

Q. Do you know who procured from Judge Cardozo all these orders? A. I think Mr. Shearman.

Q. Were you present? A. I am quite positive I was not.

Q. Do you remember Mr. Shearman leaving his office to obtain these orders from Judge Cardozo? A. I remember driving down in a carriage with him one morning for the purpose of getting one of these orders. I don't remember which.

Q. Driving from where? Was it from the office of the Erie Railway? A. I don't recollect; I remember getting out at Chambers street and walking down.

Q. (Repeated.) A. I can't distinctly remember.

Q. How shortly after you left Mr. Shearman did you see the orders granted by Judge Cardozo? A. I can't say positively, but I should judge about an hour and a half.

Q. About what time in the morning did he leave you to go to Judge Cardozo? A. I think early in the morning, about 9:30 o'clock.

Q. Look at the copy of the summons in the Lloyd and Hamilton case attached to the copy of the complaint now shown you, and state in whose handwriting is the written portion? A. I think that is in the handwriting of Howard P. Wilds.

By Judge TILDEN:

Q. Who is Wilds? A. Clerk, at that time, in our office.

By Mr. PARSONS:

Q. And is the copy of the summons, now shown you in the Carver case, so far as written, in the same handwriting? A. Yes, sir.

Q. Was there any reason on September 29th, 1869, which prevented either Mr. Shearman or yourself from stepping to the Judge holding Chambers at the Supreme Court, and obtaining the order of injunction and Receivership from him? A. There was great reason why I should not; my time was so thoroughly taken up, I suppose.

Q. Was your time more valuable than that of Mr. Aaron I. Vanderpoel? Do you know what amount Mr. Vanderpoel received for obtaining that order? A. I have no idea.

Q. Was there any reason which prevented Mr. Shearman, who obtained from Judge Cardozo the orders of the 5th and 6th, also going to the Supreme Court Chambers, and applying to the Judge there for this order? A. There were very many reasons which might occur to me. Mr. Shearman was not naturally of a strong constitution, and

had been working very hard at that time, and had been up day and night, and it might have been that he was not physically able to do it.

Q. Do you think that was the reason? A. I cannot tell the reason in another man's mind.

Q. Well, in your own mind, do you think that was the reason? A. I have not got a reason at all upon the subject.

By a MEMBER OF COMMITTEE:

Q. Don't you know that the physical debility of Mr. Shearman was not the reason that he did not go to obtain the order? A. I can't say.

By Mr. TILDEN:

Q. Who determined the question whether Mr. Shearman or Mr. Vanderpoel should go to obtain this order? A. I don't know.

By Mr. NILES:

Q. Did you say that Shearman was at that time worn down? Do you mean at the first time the order was obtained? A. Yes, sir.

Q. I think that order was granted on the 29th September. Do you mean to be understood that he was worn down by having been up night and day prior to the 29th September? A. I returned from the country suddenly, on account of a telegram which I received from Mr. Shearman. As soon as I returned I noticed that Mr. Shearman was very much worn down, and to my personal knowledge, during the week following he was up many whole nights, and was in a very unfit condition for any work whatever.

By Mr. PARSONS:

Q. Mr. Shearman did obtain one of the orders of the 4th or 5th, did he not? I mean the order in the Lloyd suit, or the Carver suit? A. I cannot state, of my own recollection, that he did.

Q. Don't you remember that a short time since you told the Committee that he did? A. I stated that I did not remember distinctly.

Q. You think that his debility may have been of that character that it prevented his obtaining the first order? A. I think so, sir.

Q. Was his debility any greater in September than in October following? A. I don't know, sir

Q. You have no recollection that it was. Have you any recollection that his debility was greater on the 29th September than on the 4th and 5th October. A. I have no recollection whatever as to his comparative debility on those days.

Q. Did Mr. Shearman continue to attend at the office after the 29th day of September? A. I think, sir; I saw him every day, working at the papers.

Q. To what date? A. Through the balance of September, and through October.

By a MEMBER OF COMMITTEE:

Q. Then, between the 29th of September and the 4th and 5th October, he took no relaxation? A. I don't remember any.

By Mr. PARSONS:

Q. Will you now look at the original summons and complaint, Willard against Neilson (marked "Ex. L. B. P., February 23d, 1872), and state whether the verification is not dated September 30th? A. I think so; impossible to remember.

Q. When, then, will you say that the manuscript draft of the complaint was prepared? A. A day or two previous, or on the 30th September.

Q. Which would it be? A. If you ask me, the probability is that it was prepared on the 29th September.

Q. Can you remember an order of injunction obtained on the 30th day of September, in Willard against Wilson? A. I can't state, but think Mr. Shearman did obtain such an order.

Q. Had he recovered on September 30th? A. He was still unwell.

Q Did not Mr. Aaron J. Vanderpoel obtain the first of the series of orders in the "Gold Exchange Bank" suits? A. I don't think he did, sir.

Q. Can you explain to the Committee why it was that Mr. Shearman did not obtain this order from Judge Cardozo, instead of employing Mr. Vanderpoel? A. I cannot in any other way than I have.

Q. And the explanation to which you refer, was that relating to Mr. Shearman's debility? A. That may be the explanation, but Mr. Shearman is in the city and can be reached, and I cannot pretend to testify as to his motives.

Q. Do you remember the substitution by Field & Shearman of other attorneys on October 8th, 1869? A. I do, sir.

Q. Were you present at the time the arrangement for that substitution was made? A. I was not.

Q. Who acted for Field & Shearman in connection with that matter? A. I don't remember exactly who acted.

Q. Do you remember that Field & Shearman were informed that an arrangement had been made that the Gold Exchange Bank, in consideration of being relieved from this Receivership, or of having another Receiver substituted in the place of Mr Brown, was to pay $15,000 to the Receiver, $5,000 to his counsel, Mr. Vanderpoel, and $5,000 to each of the attorneys in that suit? A. I don't think I knew of that, even by hearsay, until afterwards.

Q. Did you hear any of the members of the firm of Field & Shearman speak of such an arrangement? A. I may have done so.

Q. And did you understand that it was on account of their objection to these payments by the Receiver that the substitution was made? A. That may have been the reason.

Q. Do you know how it came around that other attorneys were at that time substituted for Field & Shearman? A. I don't, sir.

Q. Do you remember that prior to that substitution there had been arranged the order of October 9, 1869, which, among other things, directed the disbursement of large amounts by the Receiver to E. K.

Willard & Co., and William Heath & Co.? A. I don't remember ever seeing that order before, although I knew that such an order was obtained.

Q. Was the arrangement which resulted in that order made prior to the substitution of other attorneys for Field & Shearman? A. I think not—I think we declined the arrangement. Of course, not being present at any consultation, I could not speak positively, but my impression is that Mr. D. D. Field objected to taking any money from the defendant in this suit, but he insisted that he should be paid, if paid at all in the suit, by his own client. I think I have heard him say that he would rather take $5 from his client than $100 from the defendant.

Q. Do you remember that the firm of Field & Shearman subsequently did receive $5,000 in that suit? A. I think they did, sir.

Q. Did you not learn subsequently that that money had come from Jay Gould? A. No, sir.

Q. Did you not learn that that amount had been charged by Osborne to Willard & Co., and by them to Heath & Co.? A. I never did.

Q. Will you now explain to the Committee how it is that in the case of Willard against Wilson in the original draft, which you have stated may have been printed probably on the 29th September, 1869, as one of the ground for application for the relief sought? The fact is stated that the Gold Exchange Bank is now restrained by injunction from doing business, and is in the hands of a Receiver, when the order of injunction and the appointment of a Receiver was not made until September 29th? A. I think very likely, sir, that the papers were put in the hands of a printer on the 29th of September, after the order was granted in the suit; that the printers may have worked all night, and have got the copy out the morning of the 30th.

Q. Don't you remember, and is it not the fact, that the Willard complaint alleging the injunction and appointment of a Receivership of the Gold Exchange Bank was prepared before the order of the 20th? A. I don't think it was.

Q. Do you feel prepared to state positively that such was not the fact? A. I never knew of anything of the sort ever being done in our office; I am certain of it because I would have never taken part in the preparation of a complaint which would make a false assertion.

Q. But the recital was true at the time the complaint was verified? A. I think, sir, it must have been prepared after that order. Mr. Shearman, who prepared it, could answer. He prepared the complaint in eight cases, and he is in the city, and can be subpœnaed at any time to appear before this Committee.

Q. Do you remember being present when the arrangement was made which resulted in Mr. Vanderpoel being selected to go to Judge Cardozo and apply for the order of September 29th, 1869? A. I don't think, sir, I was present.

By Mr. TILDEN:

Q. Were you sent for in order to take a part in these litigations? A. Not especially, that I know of. Both of the Fields were away. Mr. Shearman was the only partner here; we had three or four hundred suits in the office; there was all the back work which had accumulated during my vacation; and all the new work coming in, and then there were these gold litigations.

Q. When you arrived, gold litigations begun in your office. Had any complaint been served? A. I could only answer by looking at the record; if Black Friday was on the 24th, I arri ed either on Saturday, the 25th, or Monday, the 27th.

Q. The first complaint is dated the 29th September? A. That day; yes, sir.

Q. What I wanted to know is, whether litigation commenced anterior to your return? A. I think it was not.

Q. Do you know whether the consultations in your office out of which the first litigation resulted took place before your arrival? A. I could not say.

Q. Do you know that these consultations took place after your arrival? A. I know that there were consultations, but would not, at this time, fix the date.

Q. Who examined these cases with respect to their origin? A. I think Mr. Shearman.

Q. Did not Mr. D. D. Field? A. He was in the country.

Q. Or young Mr. Field? A. He was also absent.

Q. Were both absent when you returned? A. I think so; Mr. Shearman alone of the firm was there.

Q. Do you know how long a period Mr. D. D. Field and Dudley Field had been absent? A. I think Mr. D. D. Field had been absent almost all the Summer—coming in occasionally. I think Dudley Field did not return for some time after I returned.

Q. And he had been absent for some time before you returned? A. I cannot state.

Q. I suppose you might be sufficiently conversant with the business of the office to have a general knowledge? A. I can't recollect, sir, at this period of time, exactly the dates they were present and absent.

Q. Do you know who was consulted in reference to the employment of Mr. Vanderpoel? A. I think Mr. Shearman.

By Mr. NILES:

Q. You speak of the office of Mr. Shearman in the Erie Railway building. Did Field & Shearman have an office which they hired there, or was it a room provided by the Erie Railway Company for Mr. Shearman's convenience while attending on their business? A. The latter, sir.

By Mr. PARSONS:

Q. Had Mr. Vanderpoel, prior to September 29, 1869, ever been

used by Field & Shearman to obtain from any Judge an *ex parte* order? A. I do not recollect that he had ever been so employed.

Q. Do you feel quite sure that he had never obtained from Judge Cardozo an *ex parte* order for Field & Shearman? A. No, sir.

Q. Don't you remember that both you and Mr. Shearman prior to that time had obtained from Judge Cardozo *ex parte* orders? A. I don't remember that Mr. Shearman did, and have no particular recollection as regards myself, but I may have obtained orders from Judge Cardozo.

Q. Did Mr. Shearman probably obtain such orders from Judge Cardozo? A. Possibly.

Q. Will you look at the original complaint in the suit of Osborne against the Gold Exchange Bank, which, since your first examination, has been sent by the County Clerk to the Committee room, and state whether it does not show that the summons and complaint were originally prepared complete, leaving blanks for the name of a plaintiff and for the amount of indebtedness which should be stated? A. It may have been so, or it may have been a mistake of the copyist.

Q. Is it not quite obvious, from an examination of the papers, to any person, that the amount of the alleged indebtedness and the name of the plaintiff were filled in subsequently in a different handwriting? A. Evidently.

Q. And with different ink, or ink so differently applied as to mark the difference? A. Yes, we used several inks in our office.

Q. Is not the fact that you have just stated very perceptible to any person in a casual glance at the papers; that is, that the names of the plaintiff and the amounts of indebtedness are filled in after the body of the instrument was written? A. It is to me, sir.

Q. Would it not be to any person? A. It is, sir.

Q. Now state, if you please, sir, whose handwriting is the body of the original complaint? A. The body of the complaint, sir, is in my own handwriting.

Q. And in whose handwriting is filled in the name of the plaintiff in the complaint and the amount of the alleged indebtedness, $31,000? A. I don't recognize the handwriting in which the name of the plaintiff in the complaint and the $31,000 are; they are evidently the same handwriting—some is evidently in a different handwriting.

Q. Is not the amount of $31,000 written over another amount which had been previously there? A. It looks to me, sir, as if it had been written over another amount which was written in lead pencil.

Q. Can you recognize the handwriting of that first amount? A. No, sir.

Q. Is it not the handwriting of Mr. D. D. Field? A. I could not say, sir.

Q. Look at the dollars, say if you do not recognize the handwriting of Mr. D. D. Field? A. I cannot, sir.

Q. Look for a moment, and state what is your opinion? A. I cannot form any opinion.

Q. Does it not resemble Mr. D. D. Field's handwriting? A I cannot see enough of it to form an opinion.

Q. Now that you see the original Osborne complaint is in your own handwriting, can you state whether or not you copied that from the draft? A. I think Mr. Shearman prepared the paper, and, to facilitate him, I made a copy of it.

Q. Was the draft in his handwriting? A. I could not say.

Q. Did he not prepare it? A. I can't say whether he wrote it himself or dictated it to a stenographer.

Q. Do you remember when he received, and how he received the information upon which that complaint is based? A. I was not present, and couldn't tell; Mr. Shearman is the only person.

Q. You did not know that you wrote originally the name of Benjamin E. Smith, Jr., as plaintiff? A. I did not, sir; that is not in my handwriting.

Q. Is this, then, the fact that the Osborne complaint was originally prepared without the name of any plaintiff written in; that then the name of Mr. Benjamin E. Smith, Jr., was written in, and then that was erased, and the name of Charles D. Osborne written in? A. Evidently, when I finished copying the first page there was no plaintiff's name, and there was a blank left of two lines, in reference to the amount of indebtedness to be inserted.

By Mr. NILES:

Q. Is it not usual to state the name of a plaintiff before the complaint is prepared? A. Not so far as the copyi t, and in this case I acted as a copyist.

Q. Was the name of any person inserted as plaintiff in the draft of any paper from which Mr. Shearman directed you to copy this?

By Mr. PARSONS:

Q. Look at the original complaint in the case of Henry K. Enos, as verified October 9th, 1869, and state whether the name of Henry K. Enos, both in the body of the complaint and the summons, was not inserted after the complaint was, in all other respects, complete? A. That is my opinion.

Q. In whose handwriting is the body of the complaint? A. I think, sir, that is my handwriting in the summons, in the title of the complaint Mr. Shearman's, and in the body of the complaint it looks to be like Dudley Field's; it looks like it, though it is far better than he generally writes.

By Mr. TILDEN:

Q. You copied the body of this paper? A. Yes, sir; and there are corrections in the handwriting of Mr. Shearman.

By Judge FULLERTON:

Q. You have known Mr. Vanderpoel to be employed for the Erie R. R. Co., for a great many instances prior to September, 1869? A. Very many.

Q. Often as counsel? A. Yes.

Q. Are not suits now pending, known as gold suits, growing out of the transactions on the 24th of September (Black Friday)? A. Very many. I think Mr. Stickney has fifteen of them.

Q. Which Mr. Stickney is that? A. Mr. Stickney, lately of the firm of Stickney & Whipple, and now of the firm of Stickney, Whipple & Hall?

Q. One of the gentlemen presenting these charges on behalf of the Bar Association? A. Yes. sir.

Q. These suits are now at issue, and on the calendar for trial? A. One of them has been laid before Judge McCunn.

Q. Who conducted the trial on the part of the plaintiff? A. Mr. Stickney and Judge Emott.

By Mr. PARSONS:

Q. You have stated that Mr. Vanderpoel had frequently acted for the Erie Railway Company; can you tell me who were the Directors of the Company at that time? A. I cannot, without a printed list.

Q. Were William M. Tweed and Peter B. Sweeney members of the Board at that time? A. I don't know, sir.

Q. Do you remember that they did at any time become Directors? A. Yes.

Q. Did either of the other gentlemen of what has been called in the newspapers the Tammany Ring, either Peter B. Sweeney or any other gentleman of that connection, become a member of the Erie Railway Board? A. I think Mr. Sweeney has become a Director.

Q. Is not Peter B. the brother of James M. Sweeney? A. I can't tell.

By a MEMBER OF THE COMMITTEE:

Q. I understand you to say that you know of nothing in reference to the considerations which entered into the making of the order of October 9th? A. I know nothing at all, sir.

RUSSELL A. HILLS, being duly sworn and examined by Mr. Stickney, testified as follows:

Q. Do you remember 23d and 24th of September? A. Yes.

Q. What was your business? A. Employed by Heath & Co., to execute their orders in the Gold Exchange.

Q. Employed in Gold Room? A. Yes.

Q. You remember Black Friday, 24th September, 1869? A. Yes.

Q. Were Mr. Fisk and Mr. Gould in Heath & Co.'s office on that day? A. Yes, sir.

Q. How was it on Thursday, and were they there on that day or not? A. Yes.

By a MEMBER OF THE COMMITTEE:

Q. How long on Thursday? A. Couldn't say; I only saw Fisk there once when I was there. My business was in the Gold Exchange, and I had occasion to come over to the office for orders, and during the greater part of the day I could not say positively that they were there.

Q. Did you on Thursday receive orders from Fisk to purchase gold? A. Yes.

Q. Did you hear him give orders to Speyers to purchase gold? A. Yes, sir.

Q. Will you state whether or not, through your firm or through Speyers, these gentlemen, Fisk and Gould, purchased large amounts of gold on that day? A. Yes.

Q. Was there any purchase at less than 141? A. No, sir.

Q. And it was purchased on Friday at 145, was it not? A. As to our house, yes.

Q. Did not gold open at 145? A. Yes.

Q. Then it fell to 135? A. Yes, later.

Q. Then if that gold was received by them, and settled through the Clearing House in the regular manner, would they not have been obliged to pay the difference? A. Yes, sir.

Q. Do you know, as a matter of fact, whether, after the Receivership of the Gold Exchange Bank and the injunction, Messrs. Smith, Gould & Martin and Heath & Co. were selling at 135? A. Yes.

Q. And do you remember hearing the conversation of Mr. Smith on that subject? A. Yes.

Q. And what did he say? A. He said if we would have a settlement at 135 they would assume all Fisk's contracts.

Q. How much was Fisk's contract with you? A. $3,000,000.

Q. At what price were they made? A. From 36 to 45.

Q. What was the price at which this firm proposed to assume these contracts? A. 131 to 132.

Q. What was the average of these contracts? A. About 39.

Q. Gold was then 131? A. Yes.

By Mr. TILDEN:

Q. On the $3,000,000 that would be $240,000. They proposed to assume that on what condition? A. A condition of settlement of their contracts at 135.

Q. How much? A. About $1,000,000.

Q. Through that firm alone? A. With other parties, through that firm.

Q. They proposed, if you would settle this $1,000,000, that they would assume these contracts through you? A. Through Smith, Gould & Martin.

Q. At what figure? A. Bought from 37½ to 43.

Q. What amount? A. $1,000,000.

Q. They said if you would effect a settlement of these contracts at those rates with the other parties interested, they would assume Fisk's contracts? A. Yes, sir.

Q. Did you act as agent for Smith, Gould & Martin, in making these contracts? What was the average of these contracts? A. 38½.

Q. And the contracts of Fisk were $3,000,000, bought at an average of what? A. About 39.

Q. Now, if a Receiver had not taken possession of the Bank, gold would have been cleared in the usual manner at those rates, and they would have to pay the balance? A. Yes.

Q. Then, if the injunction had not been granted, enjoining the officers of the Gold Exchange Bank, the gold would have been sold out? A. Yes, sir.

Q. Then suits would be brought to compel them to pay their balance? A. Yes, sir.

Q. And they would have been expelled from the Gold Exchange? A. Yes, sir.

Q. Their business would have been ruined? A. Yes, sir.

Q. And it was the Receivership and injunctions that enabled them to settle high-priced gold at those low prices? A. Yes, sir.

By Mr. HILL:

Q. This settlement was a mere matter of agreement between the parties; if they feared the responsibility of the parties, there was nothing to prevent them taking the less price? A. They effected a settlement through this injunction.

Q. (Repeated.) A. Yes.

Q. When did they settle? A. It took from ten to twelve days.

Q. What agency did you have in making these settlements? A. They were effected in my office.

Q. Who is the agent? A. Mr. E. K. Willard.

Q. Who acted for the firm? A. Their counsel.

Q. Who were their counsel? A. Smith & Martin.

By Mr. NILES:

Q. While these injunctions and these Receiverships remained, the parties that held these contracts against Smith, Gould & Martin and others, were they prevented from getting this money out of the Bank, money paid in from different contracts? A. They were restrained from receiving any money that was due.

Q. Had that any effect on the different parties in compelling them to settle to get these funds to go on with? A. Yes.

Q. On what ground do you say your firm could not make these settlements except for the Receiver? A. We would have been obliged to take this gold; at the prices we paid the house could not have done it, and Smith, Gould & Martin would then have been obliged to sustain us.

GRATZ NATHAN, being duly sworn by the Chairman of the Committee and examined by Mr. Parsons, testified as follows:

Q. Are you an attorney and counsellor-at-law? A. I am, sir.

Q. When were you admitted? A. In May, 1864, or in June in the same year in the same Term.

Q. It has been said on this investigation—is it the fact—that you are the nephew of Judge Cardozo's wife? A. Yes, sir.

Q. Was Judge Cardozo sitting on the Bench, and in what Court, when you were admitted to the Bar? A. I think he was on the Bench of the Common Pleas.

Q. From this he went to the Supreme Court? A. Yes.

Q. Do you remember the date of his election to the Supreme Court? A. County election, November, 1867.

By Mr. TILDEN:

Q. Took his seat January, 1868? A. Yes, sir.

By Mr. PARSONS:

Q. Were you subpœnaed to produce certain books and papers, and have you done so? A. Yes, sir; all of them that I have been able to find.

Q. What have you been unable to find? A. Some of my check books.

Q. Covering what date? A. Cannot say; there are some gaps; the books are all here.

Q. Please arrange them in the order of their dates. A. I produce check book of Mechanics' Banking Association, commencing June 8th, I think, 1868, and running, I think, until June of the following year. The next commences October, 1870 (probably one intervening which I have not been able to find), ending March, 1871. One commencing March, 1871, and running to the present time.

Q. Did you, during that period, keep any other account? A. I did, part of the time; I kept an account with the Guardian Savings Bank, and produce check-books, one commencing October, 1870, and running to May, 1871; and one commencing where the first ends, May, 1871, and running to the suspension of the bank in October, 1871, covering the whole period.

Q. Are the accounts with the Mechanics' Bank and the Guardian Savings Bank the only accounts which you kept at that time? A. No, sir; I kept an account in the United States Trust Co. from about February, 1871, to about November or December, 1871, but kept no check-book there.

Q. Is that the only other bank? A. I keep an account at present with the National Trust Co., which I opened in 1871, and still keep the account. I have the check-book from that opening to the present date.

Q. Have you now stated all the banks in which you ever kept any accounts since January, 1868? A. Yes.

Q. Do you mean to say that you never kept a bank account before you were admitted? A. Oh, yes, but in the Mechanics' Banking Association.

Q. Give the date when it commences and again when it terminates? A. Commences 8th June, terminates on May 8th, 1869.

Q. Have you then produced, under your subpœna, all your check-books showing your accounts with the Mechanics' Banking Association, except such as are embraced in the interval between May 12th, 1869, and October 6th, 1870? A. I think so.

Q. Where is the check covering that period? A. I don't know; I have looked for it, and have been unable to find it; one reason I can give is, that the building in which my office has been, has been changed—in fact, almost torn to pieces. I have made a diligent search for this, but have been unable to find any more than I have produced. I intend to continue to search.

Q. Was that alteration prior to May, 1869? A. No, sir—during last Summer.

Q. There was only one check-book covering that interval, or were there more than one? A. I could not say; probably one, judging from the time of these I produce.

Q. Don't you know where that check-book is? A. No, I do not.

Q. Have you seen it lately? A. I have not for a long time prior to this date.

Q. Do you mean it was not with the others? A. It was not.

Q. When did you last see it? A. I have no distinct recollection.

Q. Have you the return checks corresponding with the stumps of that check-book? A. I think I have. I kept a book on that bank at my house, and probably entered five or six checks there, five or six checks, merely for household expenses, and did not recollect until now that I had made any.

Q. Do you remember the appointment of a Receiver of the Mercantile Fire Insurance Company by Judge Cardozo, on the 31st October, 1869? A. I remember the appointment, but not the date.

Q. Will you please state to the Committee your recollection of that proceeding? A. My first knowledge of the transaction, in any form, was when the order and the papers on which it was made were sent to me by the Receiver. I think I found them at my office on going there, with a message asking me to draw the bond, and stating that he would be at my office in a short time. I drew the bond, and had it executed in my office, and went with him to the office of the Company where we met some of the officers. Soon after, a number of the Directors, who I understood had been sent for, and Mr. Owens, counsel for the Company, came in. I remained there some time with the Receiver, and then left. That was some hour in the afternoon; I think as late as four when I left. I went to the office of the Company next day, saw the Receiver a few minutes, and the next I heard of it was that the injunction was dissolved and the Receiver discharged, and I learned that from, I think, first Mr. Nash, whom I met in the street.

Q. At what hour did you get that message? A. I don't remember; I think it was after twelve o'clock.

Q. How long was it prior to your going with the Receiver to the office of the Company? A. He came to my office and executed the bond; I sent up and had it filed; I then went with him to the office

of the Company; I remained outside, and went in after a few minutes.

Q. How long before your coming to the office of the Company was it that you received this note or message from the Receiver? A. I should think between one and two hours.

Q. How shortly after receiving the message or note was it that you saw the Receiver, General Rogers, and where did you then see him? A. At my office, probably within half an hour afterwards.

Q. Who is General Rogers? A. Cashier of the Gold Exchange Bank.

Q. How long had you known him prior to that time? A. About two years.

Q. Had you been his counsellor in any transaction during that time? A. No, sir; never.

Q. Had you had personal relations with him? A Yes; quite intimate.

Q. How long was he Cashier of the Gold Exchange Bank? A. I have no idea.

Q. Who were the sureties upon his Receiver's bond? A I think there was only one: Mr. Bixby, I think—Francis M.

Q. Who is Francis M. Bixby? A. A merchant in this city.

Q. Had you acted as counsel for him in transactions previously? A. Yes.

Q. In these transactions had he held the position of Receiver? A. Yer, sir; some of them.

Q. Appointed by whom? A. In many of the cases by Judge Cardozo; in one, I think, by Judge John H. McCunn; none others that I recollect.

Q. In how many proceedings had Mr. Francis M. Bixby been appointed Receiver by Judge Cardozo, you acting as his counsel? A. Probably, at a rough calculation, about six times.

Q. Can you state the cases? A. There was the case of the British Commercial Life Insurance Co., the case of the Great Western Mutual Life, and there was some two or three partnership suits whose titles I don't recollect.

Q. Have you ever acted as his attorney and counsel for any private legal business? A. No, sir.

Q. Solely in his capacity as Receiver? A. Solely in these instances.

Q. Is the same the case in respect to advice? A. Well, since I have been acquainted with Mr. Bixby, which covers about three years, I have been his general counsel, and he has consulted me in all his matters.

Q. Are the only legal proceedings in which you have acted for Mr. Bixby those in connection with these Receiverships? A. So far as I recall, yes.

Q. When were you first employed by Mr. Bixby as Receiver? A. I don't remember: I cannot give the date.

Q. Can you tell the year? A. I think in 1868.

Q. About what time? A. In the Summer; I remember now.

Q. Was that the beginning of your acquaintance? A. No, sir.

Q. How long before were you acquainted with him? A. I don't remember.

Q. Was he acquainted with Judge Cardozo? A. Yes, sir.

Q. For how long had he been acquainted? A. I don't know.

Q. To your knowledge, how long? A. I have not the slightest idea, sir; I have heard Judge Cardozo speak of him repeatedly.

Q. Wasn't it through Judge Cardozo that you became acquainted with him? A. I think not, sir.

Q. Did you not first become acquainted with him through his Receiverships? A. I think not.

Q. Have you no distinct recollection? A. Not distinct. I can state that I had an acquaintance with him; I used to meet him at one place and another, but not intimate; I remember his calling at my house one evening after he had been appointed Receiver by Judge Cardozo; that was the first time.

Q. Is that the first occasion you had seen him? A. No, sir.

Q. Have you not some recollection of some introduction or conversation prior to that time? A. I have, sir.

Q. By whom? A. I had a speaking acquaintance with him; can't say how or when he was introduced to me.

Q. Had Hiram C. Rogers ever been appointed Receiver in any proceeding prior to that in which you received the note or message which you say he sent you? A. I don't know, sir.

Q. Have you that note? A. I am not even sure that it was a note.

Q. Do you know E. D. Benedict? A. No, sir.

Q. Do you not know an attorney of that name? A. No, sir

Q. You know of him? A. I know such a person was attorney for the plaintiff in that proceeding.

Q. Do you know William H. L. Owens, petitioner in this proceeding? A. No, sir.

Q. Do you know Mr. B. F. Rice? A. No, sir.

Q. An attorney in connection with the Mercantile Fire Insurance Company Receivership? A. No, sir.

Q. Was the message or note which came to you from Gen. Rogers the first intimation to you about putting the Mercantile Fire Insurance Company into the hands of a Receiver? A. It was the first intimation in regard to that Company.

Q. What had been intimated to you with reference to procuring a Receiver of any Insurance Company, at or shortly prior to that time?

(Some lost, the witness mentioning the Beekman Fire Ins. Co.)

Q. Who did procure the order from Judge Cardozo? A. The plaintiff's attorney, I presume.

Q. Who was he? A. Mr. William J. Kane.

Q. Had there been any communication between you and Judge Kane in reference to this matter? A. Yes, sir.

Q. Was it you who designated Judge Kane to be attorney for the proceeding? A. I think it was. The plaintiff was a client of mine, and came to me and suggested that he wished commenced this suit, and I sent him to Judge Kane.

Q. Did you call upon Judge Cardozo on that subject? A. I think not.

Q. Will you state positively to these gentlemen that you did not see Judge Cardozo with reference to procuring the appointment of Bixby as Receiver? A. That is the best answer I can give you. I should not like to state positively that I did not.

Q. Do you recall any case on the application for the appointment of a Receiver where you have seen Judge Cardozo before the appointment was made? A. No, sir.

Q. The Company of which you spoke just now was the Mercantile Insurance Company? A. No, sir; the Beekman Fire Insurance Company.

Q. What did you do with reference to bringing about the appointment of a Receiver in that proceeding? A. That is some time ago; my best recollection is that I did nothing.

Q. Did you not see Judge Cardozo in reference to that proceeding? A. I have no recollection of the subject at all.

Q. Is it the fact that you are unable to state whether you had any conversation with Judge Cardozo before the appointment of a Receiver was made in reference to the subject? A. I don't think I did, sir.

Q. Can you now state whether or not you have seen Judge Cardozo in connection with proceedings in which Receivers were appointed, you becoming the attorney of such Receiver prior to the appointment? A. I don't think of any case in which I have seen him.

Q. In how many cases have you seen him where you subsequently became attorney for the Receiver? A. I don't remember any case of that kind.

Q. In how many cases where you have become attorney for the Receiver has the proceeding been initiated in your office, or through your client? A. I don't remember any except the Beekman.

Q. Do you know E. R. Meade? A. Yes.

Q. In how many cases where you have been attorney or counsel did E. R. Meade have anything to do with the proceedings? A. I don't think only of two in which he had any connection at all.

Q. In these two cases was there any connection between yourself and Mr. Meade prior to the appointment of Receiver? A. I think not.

Q. Are you sure? A I am positive.

Q. Can you state positively in both of these cases? A. In one I certainly can; in the other I am not so certain. I think in both.

Q. Was any suggestion made to you prior to October 31, 1871, by any person with respect to any proceeding to procure the appointment of Receiver of any insurance company, and if so, state the nameof the company? A. Not that I remember.

Q. Has not such a suggestion come to your hearing? A. Not that I remember.

Q. Can't you remember with considerable accuracy what took place so lately as October, 1871? A. I have no recollection of any such suggestion. That is as positively as I can answer.

Q. Do you mean to state that the first intimation to you of any intention that there should be a Receiver of the Mercantile Insurance Company or of any other company was the message or note of Mr. Rogers? A. Yes.

Q. In the case of the Beekman Fire Insurance Company, why did you suggest to Judge Kane that he should make his application for a Receiver to Judge Cardozo? A. If I did so the object was (or it may have been) that Bixby should be appointed Receiver. I knew the Judge was in the habit of appointing him.

Q. Why did you think that Judge Cardozo would appoint him? A. I thought very likely.

Q. In the event that such a thing should happen as that perhaps Bixby would be appointed Receiver, do you mean to state that you had nothing whatever in view for yourself? A. I certainly had, sir, because I expected in such a case Mr. Bixby would engage me as counsel.

Q. Did you tell Judge Cardozo that it was you who suggested this application to him? A. Not that I remember of.

Q. How did you communicate to Judge Cardozo that it was Mr. Bixby whom you desired to have appointed Receiver, and that you were interested in the proceeding? A. I don't think I did.

Q. Then do you mean to be understood that it was by accident that Mr. Bixby was appointed Receiver, and Judge Cardozo was the Judge to whom application was made? A. I think I probably suggested that the application be made to Judge Cardozo.

Q. You left it to the chance then that Judge Cardozo would probably appoint Mr. Bixby Receiver without the mention of his name? A. I think so.

Q. Did Judge Cardozo know that prior to October, 1871, in the Bixby Receiverships, you represented him as counsel and attorney? A. I think he did.

Q. He had fixed your compensation in cases prior to that time? A. Yes, sir.

Q. There had been some other proceedings by you as attorney for Receiver, before Judge Cardozo? A. I think so. There were some proceedings probably.

Q. So far as you know, did Mr. Bixby originate proceedings for the Receivership of the Mercantile Fire Insurance Co.? A. I have not the slightest notion on the subject.

Q. Have you never learned from any source? A. No, sir.

Q. Didn't the paper show you whose name had been used as petitioner? A. Yes; Mr. Owens was petitioner.

Q. Had you seen any of those papers before? A. Not to my knowledge; nor since, that I know of.

Q. Were you in the habit, prior to that time, of visiting Judge Cardozo? A. Yes, sir, frequently.

Q. How frequently? A. It would be hard to say. Sometimes, perhaps, I would not visit him once in a week or two.

Q. At his house? A. Yes, sir; probably as much as once a week.

Q. Did you also see him in the new Court House pretty frequently?

And when you saw him on these occasions, was it frequently at other places and on other occasions than when he was holding Court? A. Frequently.

Q. On such occasions did you at times obtain orders from him? A. At times, yes.

Q. Pretty frequently? A. I think not, sir.

Q. Was not the usual occasion of your going to see Judge Cardozo at the Court House for the sake of obtaining an order from him? A. No, sir.

Q. Do you mean to be quite sure about that? A. Yes, sir.

Q. Will you look at the original order and petition in the matter of the Mercantile Fire Insurance Co., and state if you recognize any of the handwriting on it? A. I recognize the name of the Receiver in the Judge's handwriting, and his signature

Q. What, if anything, had passed between Judge Cardozo and yourself prior to that time on the subject of his appointing as a Receiver, Mr. Rogers, in any proceeding which might come before him? A. Nothing at all.

Q. Had his name not been mentioned? A. Not in that connection.

Q. In any connection? A. Not that I remember, except he may have spoken of him as a mutual acquaintance.

Q. Can you explain how it happened that Mr. Rogers, who had never been represented by you in any prior proceeding, immediately upon his being appointed Receiver of the Mercantile Fire Insurance Co. sent a message to you asking you to be his counsel? A. I think so. He was an intimate friend of Mr. Bixby's, and knew I was acting for Mr. Bixby in the same capacity. I presume that is the reason that he called on me, because he knew I had represented Mr. Bixby.

Q. What, if anything, so far as you know or have heard, had Mr. Bixby to do with bringing about the appointment of Mr. Rogers as Receiver? A. I know nothing about it.

Q. What have you heard on the subject? A. I have an indistinct recollection of Gen. Rogers having said to me that he understood Mr. Bixby had suggested to Judge Cardozo that he might, sometime or other, appoint Mr. Rogers Receiver, or do something for him.

Q. Something of what? A. In that way, appointing him Receiver; put something in his way.

Q. Explain to these gentlemen what is meant by putting things in one's way. A. I think that is understood by them.

Mr. Niles:

We understand what is meant.

Q. Have you explained all that you subsequently had to do in that proceeding? A. I think so, sir.

Q. Didn't you see Judge Cardozo on the subject subsequent to the appointment of a Receiver? A. I think I did.

Q. How many times? A. Once, I think.

Q. Where? A. At the Court, I think.

Q. When? A. I think it was the day following the appointment.

Q. What took place between you? A. I told him that the Company claimed to be solvent, and that I had instructed Mr. Rogers, in view of that claim, to do as little as possible to call public attention to the fact of the appointment of a Receiver, so that the Company should not be injured if it turned out that it was able to go on in business.

Q. Had you not learned at that time that there was to be a very vigorous opposition to the attempt to appoint a Receiver? A. No, sir.

Q. Didn't you learn that in your call upon the Company? A. No, sir; I didn't gather that. There were several directors present. They spoke of applying to the Court, before the return day, for the purpose of having the injunction dissolved and the Receiver removed. They were in consultation with Mr. Owen, the counsel, and I remember his stating to them that they had better have the examination into their affairs, which was then being made by the Superintendent of the Insurance Department, completed before the return day, so that, if their condition was a solvent one, they could then show it to the Court.

Q. Was the reason or occasion of your having this interview with Judge Cardozo the knowledge on your part of the very ruinous effect on the Company of the appointment of a Receiver, it being a solvent Company? A. I don't know that there was any object in my conversation with Judge Cardozo.

Q. Was that the occasion of your mentioning the matter to him? A. No, sir; I think I merely mentioned it to him as a matter of news.

Q. Did you go to see him? A. I think not.

Q. Are you quite sure? A. I used to stop in at Court very frequently. Sometimes I would stop in several times a week on my way down town, and I very likely stopped in in that way. I don't think I went there for that purpose.

Q. Didn't you know the effect would be very ruinous to the Company if they were solvent? A. No, sir. I knew the effect would be disastrous to the Company if the report got into the papers.

Q. When you learned, on the afternoon of October 31st, that the officers of the Company insisted that the Company was solvent, did you not yourself determine that there would be very vigorous opposition before the Company would acquiesce in the Receivership? A. No, sir; I thought there might and there might not be.

Q. It did occur to you, then, that there might not be any vigorous opposition? A. I don't remember what impression I got more than I have stated. I thought that if the result of the examination by the Superintendent was satisfactory they would oppose it, otherwise not. That is the judgment I formed. When I went in the following day, as I have stated, to see Mr. Rogers for a moment, the officers of the Company were there engaged.

Q. Do you know Mr. T. C. T. Buckley? A. Yes, sir.

Q. Will you explain how it happened that he was retained to or did appear upon the return of the order to continue the Receivership?

Did you have nothing to do with bringing about his appointment. A. No, sir; I am confident that I did not.

Q. Don't you know whether you did or did not? A. I know I did not.

Q. Is it possible that you have forgotten the circumstances? A. I know I did not.

Q. State, if you please, what took place with reference to continuing on the return day of the order, that Receivership. What arrangement was made for the procurement of counsel or for anything, to your knowledge? A. Nothing that I can remember.

Q. You were very much interested that the Receiver should be continued? A. I did not feel so. I felt that if the condition of the Company was what some of the officers claimed it to be, that I should be glad to have the Receiver removed.

Q. To have nothing to do with it? A. That was not my feeling at all. My feeling was that if the Company ought not to be wound up, it should not be.

Q. And yet you don't know how Mr. Buckley happened to appear upon the return of the order to show cause? A. No, I don't.

Q. Was there some conversation between you and Judge Cardozo on the subject of counsel to represent the petitioner, on the return of the order to show cause? A. No, sir, never.

Q. Was there ever any conversation between you and him about Mr. Buckley? A. No, sir.

Q. Are you quite clear on that point? A. In connection with that suit?

Q. I don't mean that suit particularly. A. I have no recollection of talking about Mr. Buckley. It is very possible that his name has been mentioned.

Q. Did you know that Mr. Buckley was a gentleman of whom Judge Cardozo thought well? A. I don't know that I ever heard him speak well or otherwise on that subject.

Q. Your mind is a perfect blank? A. Yes.

Q. Did you say anything to Mr. Rogers about the necessity, if that Receivership were to live, of counsel being employed to represent the proceeding, upon the return of the order to show cause? A. No, sir.

Q. Did you see Mr. Benedict, the attorney for the petitioner, or Mr. Owens, the petitioner, at any time. A. Not to my knowledge.

Q. Then you have no information which will explain how it was that Mr. Buckley appeared on the return order to show cause? A. Mr. Buckley has told me that Mr. Benedict retained him.

Q. You made no suggestion to that end? A. No, sir.

Q. Nor Mr. Rogers? A. No, sir.

Q. Is the Beekman Fire Insurance Company the only Company of which a Receiver was appointed after the Chicago fire, attorney and counsel for whom you became? A. No, sir.

Q. What other Company? A. The Astor.

Q. How about the New Amsterdam? A. I never had anything to do with that.

Q. Have you given any testimony here in reference to the appointment of a Receiver of the Astor? A. No, sir.

Q. When was the order made appointing a Receiver, prior or subsequent to appointing a Receiver of the Mercantile Company? A. I could not say.

Q. Was it about that time? A. I have no doubt it was within a month of that time, one way or the other.

Q. Who was appointed Receiver of that Company? A. Mr. Bixby.

Q. On whose application? A. Mr. Phillips, who was the plaintiff's attorney.

Q. Where is his office? In Broadway, near Liberty street.

Q. Who was the petitioner or plaintiff? A. Mr. Albert C. Baye.

Q. Was he a client of yours? A. No, sir.

Q. What was the first you heard of that proceeding? A. I met Mr. Phillips in the street; told me a client of his in Philadelphia, who held a considerable number of shares in the Company, desired to bring a suit and have a Receiver appointed. He is an intimate friend of mine, and he came to see me in regard to it; I helped him commence that suit.

Q. You prepared the papers? A. I helped prepare them. I have no doubt I had more than he to do about it. The papers were drawn; I think I went with him when he applied for the order.

Q. Did he apply to Judge Clerke for the order? A. No; to Judge Cardozo.

Q. Where did you find Judge Cardozo? A. At the Court House.

Q. Where at the Court House? A. I don't remember; either in Chambers or Special Term.

Q. What was the date? A. I cannot tell.

Q. Was Judge Cardozo assigned to hold Chambers at that time? A. That I don't remember.

Q. Where is the room which you speak of as Chambers, where you may have seen Judge Cardozo? A. I mean the room in which Chambers are held.

Q. Did Judge Cardozo make the appointment upon that application? A. Yes, sir; he appointed Bixby.

Q. Did Bixby retain you as counsel? A. Yes, sir.

Q. How shortly after the appointment was made did he appoint you? A. Immediatley, I think.

Q. Had you seen him on the subject previously? A. I think I had, sir; but I cannot be certain about it.

Q. Had he seen Judge Cardozo on the subject? A. I think not.

Q. Was he with you when you made the appliation? A. No, sir.

Q. Have not you heard whether he had seen Judge Cardozo previously to his appointment? A. I am pretty certain that he did not.

Q. Was it you suggested that Mr. Bixby be appointed Receiver? A. I think so; either he or I suggested it.

Q. Did Judge Cardozo read the papers upon which the appointment was made? A. Yes, sir.

Q. Are you quite sure of that? A. I never saw him sign any paper without reading it, on an application of that kind; I have seen him sign orders by consent.

Q. How many times prior to this had you applied to Judge Cardozo either in your own behalf or in support of others for the appointment of a Receiver? A. I don't remember any other.

Q. Was that application in the case of the Astor Fire Insurance Company, an application by a stockholder? A. Yes.

Q. How long had he owned the stock before he made the application? A. I don't know.

Q. Had you made any suggestion about his becoming a stockholder? A. I remember this. The owner of that stock, who I said lived in Philadelphia, sent on the stock with a power of attorney, and wanted it transferred to some other persons to bring the suit, as he was not here where he could attend to it. Such a transfer was made, whether on my suggestion or not, I don't know.

Q. Who brought about the arrangement that the stock came on from Philadelphia? A. It had been sent on to commence a suit against the Company.

Q. Did you lend any money about that time, to any person having anything to do with that proceeding? A. No, sir.

Q. How many shares were there? A. I don't remember. Somewhere between one and two hundred, I think. It was a Company which had been doing a flourishing business.

By Mr. TILDEN:

Q. Hundred dollar shares? A. I don't remember.

Q. Do you not recollect this circumstance—that in the matter of the Astor Fire Company, the Company themselves were making arrangements with a view to the appointment of a Receiver who should be acquainted with the business of the Company and represent the body of stockholders, and creditors, and that learning that contributed a little expedition to the rate at which your Receivership was obtained? A. I know nothing about that at all, until when the Receiver took possession of the office of the Company, the Secretary of the Company stated that he was Receiver, and had already been appointed. I was present with Mr. Bixby at the time, and I said, "very well, if that is the fact we have no business here." I asked him to see the order. He stated he had not the order, and Mr. Bixby and I remained there. He sent for his attorney. He came down, and it then turned out he had procured an order appointing this Secretary, Receiver.

By Mr. TILDEN:

Q. From whom? A. Judge Brady. He had just then filed

the bond. The attorney for the Company, or the lawyer, with whom I am on very good terms was Richard C. Fellows. I think we agreed on a legal proposition, that the Receiver who was first qualified, was the lawful Receiver.

Q. Which was that? A. That was the question. He laughingly told me he would not tell me when he filed his bond. I told him I had filed mine a few minutes after nine. "Very well," he said, "we can bring up the question soon enough." Said I, "Will you give up possession?" "No," said he. "Very well," said I; "we will bring it up in this way; I will draw the papers, stating that Mr. Yereance declines to give up possession; I will get an order to show cause for contempt and serve it on you, and we can go up this afternoon and have this matter determined." I did draw the papers, served the order; we met there; the matter stood over either one or two days by consent, both parties agreeing that the *status quo* should remain. The matter did come up and was adjudicated in favor of Mr. Bixby.

Q You say Judge Brady had appointed Mr. Yereance, Receiver? Was he sitting in Chambers at that time? A. I think so.

Q. Then Judge Cardozo was not? A. I think he was in Special Term, and attending to Chambers at the time.

Q. There is a regular Chambers Term, and Judge Brady was sitting in Chambers? A. I think so.

Q. Was it at Chambers that you made your application to Judge Cardozo? A. I think it was in Chambers or Special Term. He frequently held Chambers in the Regular Chambers room when other Judges were holding during the month.

Q. (Repeated.) A. I am still not very positive on the subject.

Q. How does your recollection incline? A. It inclines that he was in Special Term, from the circumstance that you mention of Judge Brady being in Chambers, although I have no distinct recollection on the subject. When I said Special Term, it was in reference to this matter which I know was in the Special Term room.

Q. You say you arranged with Mr. Fellows to bring up the question immediately? A. Yes. On an application to show cause for contempt.

Q. Did you go to Judge Brady, who was holding Chambers at that time, regularly assigned, for the order to show cause? A. No, sir. I went to Judge Cardozo and asked him if he would not remain there until two o'clock, as it was important for all parties interested that it should be determined at once.

C. Did Judge Cardozo consent to remain on your personal application? A. He told me he expected to be there until three o'clock, at any rate.

Q. Did he remain? A. Yes. When I went up there he was engaged in other business.

Q. Did the order to show cause, which Judge Cardozo gave

you on that occasion, require the other party to show cause before Judge Cardozo or before Judge Brady? A. Before himself —Cardozo.

Q. Where? A. I don't remember the phraseology. Special Term, I presume.

Q. Was it not the room in the Court House known as No. 13? A. No, sir.

Q. Do you know such a room? A. Yes, sir.

Q. Have you had occasion to visit Judge Cardozo there? A. Yes, sir.

Q. That is the room he occupies? A. Yes, sir; that is his private room.

Q. His private room? A. Yes, sir; not used by any other Judge.

Q. His private room is fitted up as a Court-room? A. It is a room that he holds Court in, but no other Judge does.

Q. Then it is a private room in which Judge Cardozo, when he desires, holds Court? A. That last part of your question applies to it. Whether it is a private room, I should not like to say.

Q. You have stated that, in your conversation with Mr. Fellows, you told him your bond had been approved a few minutes after nine o'clock of the morning of that day, on your way down town? A. It had been filed at that time.

Q. Did you mention that with confidence, because you thought it was impossible he should have procured his bond to be filed at so early an hour? A. No, sir. I thought, when I said that, it may have been that his had been filed on the preceding Saturday. I knew nothing about it. When I thought there was a possible conflict on the subject, I said to him, "Well, whichever bond was first filed that controls the matter."

Q. What was the day on which you obtained the order appointing a Receiver in that case; Monday? A. I think it was Saturday.

Q. Be so good as to remember? A. I am pretty certain it was Saturday.

Q. At what hour? A. I don't know.

Q. Was it obtained at Judge Cardozo's house? A. I think not.

Q. Was it not obtained late on the evening of Saturday at Judge Cardozo's house? A. I think not.

Q. Will you state such was not the fact? A. I think it was obtained at the Court, sir.

Q. (Repeated). A. It was not late in the evening.

Q. Take your own choice as to the hour, but was it not on the evening of Saturday, at Judge Cardozo's house? A. I think, as I have said before, that it was obtained during the day at the Court.

Q. Will you state it was not obtained on the evening of Satur-

day at his house? A. To the best of my recollection it was not.

Q. I simply desired to know whether you would state that such was not the case? A. There is a bare possibility that I may be mistaken. I should not like to state that, but I am pretty confident.

Q. State now when the bond was approved by Judge Cardozo? A. I think on Saturday evening.

Q. How late? A. I don't remember.

Q. State, if you please, why, when Judge Brady was the Judge regularly holding Chambers at that time, you didn't make your application for the appointment of a Receiver, and the approval of the bond to Judge Brady? A. For the reason that I preferred this Receiver should be a person—should be Bixby.

Q. Would not Judge Brady have appointed Mr. Bixby? A. I don't think he would.

Q. And Judge Cardozo would? A. Yes, sir; I thought likely.

Q. You thought he would make no objection? A. I don't know.

Q. You remember that he did not? A. I don't know who suggested it. If he suggested it I know he made no objection.

Q. In the conversation you had with Mr. Fellows, which you say was a laughing, pleasant conversation with a personal friend, did you tell him you would make your order to show cause returnable before Judge Cardozo? A. I don't remember. I don't remember. I think very likely I did. I don't know whether I did or not.

Q. Mr. Fellows and you both knew Judge Brady was holding Chambers regularly? A. I presume so. By the by, I do remember something more. That motion to show cause for contempt, when it was heard, I think was heard in the regular Chambers room. I think that was so.

Q. I thought you said it was returnable on the same day that you obtained it? A. So it was, but I think it was adjourned afterwards.

Q. It was not heard on the return day? A. No, sir.

Q. How long was it adjourned over? A. One or two days, I don't remember which.

Q. Was the order obtained just as one term followed another, or was it in the middle of a term? A. I don't remember which.

Q. Will you explain how it happened when the order to show cause was adjourned over for a day or two, Judge Cardozo happened to be sitting on the adjourned day to hear the motion at Chambers? A. It may have been at the end of one term and the beginning of another.

Q Suppose it was not at the beginning of one term and the

end of another, how did it happen that Judge Cardozo was there and not Judge Brady? A. If it was so, then he was holding Chambers in place of Judge Brady, who might have been absent, as the Judges sometimes were. It may have been as you say, and I think it was now, the end of one term and the beginning of another.

Q. But are you quite sure in your recollection that on the adjourned day Judge Cardozo was there to hear that motion? A. I am pretty sure the motion was heard by him in the regular Chambers room.

Q. Did that decision continue Bixby? A. It did. Judge Cardozo wrote an opinion on the subject.

Q. When was the bond by Mr. Yereance filed? A. I think it was after 10 o'clock.

Q. Which was the earlier order? A. I think the other was the earlier date. I don't remember whether it was filed earlier or not.

Q. The way in which your bond was procured to be filed first, was, by your going with the diligence you have described, to Judge Cardozo's house and getting it approved? A. No doubt that contributed to the result.

Q. If that application had been made in the ordinary way to the Judge sitting at Chambers, the probability is that Mr. Yereance would have been determined to be the Receiver? A. I afterwards learned from Mr. Fellows, the delay in the proceeding was owing to Judge Brady retaining the papers and delaying it; that might be so.

Q. When you presented your bond to Judge Cardozo he did not keep it? A. No, sir.

Mr. TILDEN:

What time in the day was your bond filed? A. A little after nine.

Q. The other bond was the day before? A. I don't remember.

Q. Was that order one day earlier than this order? A. I don't remember. It was dated earlier. I don't remember whether it was filed earlier.

Mr. PARSONS:

Q. What was the hour Chambers regularly opened, the regular hour at that time? A. 10 o'clock. It is generally so.

Q. Then you actually got your bond approved and filed before the opening of the Court? A. I got it approved on Saturday, and filed it before the opening of the Court.

Q. And Mr. Fellows did not have his bond approved until Court opened, and that was 10 o'clock? A. I think he told me that he went to Judge Brady's house in the morning; I won't

be positive, but I think he told me so. He told me he saw Judge Brady. I won't be certain about it; that is my impression. I know he did not present it to Judge Brady until Monday.

Q. And you know Judge Brady didn't open his Court on Monday until about 10 o'clock? I presume so.

Q. Had you any intimation of the order granted by Judge Brady, on Saturday? A. No, sir.

Q. No intimation of it until you and Mr. Bixby called at the office of the Company? None whatever.

Q. How shortly after the Chicago fire was that appointment? A. I don't remember; undoubtedly within thirty days.

Mr. TILDEN:

Q. Won't your diary show the time? A. I don't know. I don't enter all those matters. I have no register here that will show it.

Q. Didn't you enter in the diary a note of the order to show cause? A. I think very likely I did. There is no entry of this matter at all.

Q. Did you have any intimation that any stockholder was attempting to prevent the appointment of a Receiver in the Astor case? A. No, sir; I had no intimation.

Q. Had you no information that the Astor Company was insolvent? A. I knew it was insolvent, but as to any proceedings pending I had no knowledge.

Mr. FLAMMER:

Q. Did you know the stockholders proposed to make up the deficiencies of the Company? A. No, sir; I never heard that yet. Some of the stockholders of that Company and some other Company have formed a new Company, but it is not built on the ruins of the old one, as I understand it.

Mr. PARSONS:

Don't you find the matter entered in your diary? A. I find that on Thursday, the 2d of November, I have an entry to meet Mr. Fellows at 12 o'clock. Here is an entry that I overlooked: On the 31st of October, which was Tuesday, the case of Baye *agst.* The Astor Insurance Company, at 11 o'clock.

Q. Does not that happen to be the very day upon which the Receiver of the Mercantile Fire Insurance Company was appointed—October 31, 1871? A. I don't know.

Q. Is the Astor Company the only other Company which you have not previously mentioned, a Receiver of which was appointed by Judge Cardozo, for which Receiver you became attorney and counsel? A. The Astor and Beekman, yes, sir.

Q. Was Mr. Bixby with you when you went to Judge Cardozo's house to get the bond approved? A. I think not.

Q. Where did he execute the bond? A. Down town somewhere.

Q. Who was his surety? A. I don't remember.

Q. Where is Mr. Bixby's office? A. No. 4 Warren street.

Q. Has he any other business than that of his Receiverships? A. He is in the storage business, in Greenwich street.

Q. Any other business carried on at Warren street, except the business of his Receiverships? A. Yes, sir; the office of the Stafford Pavement Company was there. He was an officer of that Company. The business of those Companies of which he was appointed Receiver, was removed to that office of his after his appointment.

Q. Was the business so considerable as to require that there should be a special office for its transaction? A. I am afraid I don't understand your question. The business required that he should move to some office, and so he removed to his office at No. 4 Warren street.

Q. Did you have anything to do in the case of the Astor Company in bringing about the acquisition of the stock upon which the application for a Receivership was based? A. Nothing beyond what I have stated.

Q. And in the case of the Mercantile? A. Nothing at all.

Q. When were you first appointed Referee in any proceeding by Judge Cardozo? A. When he was Judge of the Court of Common Pleas.

By Mr. TILDEN:

Q. I want to ask the witness a question about this Mercantile Insurance Company. Was the person who applied for a Receiver, a stochholder or creditor? A. I think he was a stockholder.

Q. To what extent? A. I don't know.

Q. Which case was it in which the plaintiff was your client. A. The Beekman.

Q. How much stock did he own? A. I think $500.

By Mr. PARSONS:

Q. Did you have anything to do with bringing about the purchase of stock by the person who moved that proceeding? A. No, sir; he had owned it for a long time.

By Mr. TILDEN:

Q. Who was the plaintiff in this case? A. Dr. Gomez, a physician.

Q. Doing business in the city? A. Yes.

Q. Where is his office? A. 25th street. He is a relative of my wife.

Q. What was the market value of the stock at that time. A. Before the fire it was above par. He told me, I think, he had

refused 110. It was a Company which had had a very flourishing business, for a great many years.

Q. Who made the first suggestion that a Receivership was necessary? A. I think he came to my house, and seeing some other Company put in the hands of a Receiver, asked me if he could not treat this Company the same way?

Q. What did he say his object in doing that was? A. I could not say; I think he had a little feeling that he had not been used rightly; I don't remember what he claimed; I told him it could be done.

Q. Did you know he had this stock at the time he talked with you about it? A. I think not; possibly I had heard; I think I heard that he had $500 stock in some failed Company, and was going to lose it, but I think I didn't know what one.

Did he make any arrangement to get back his loss in this proceeding? A. No, sir.

Q. Was there any understanding between you? A. I think not; possibly it might be; that I might be able to get something back.

By Mr. PARSONS:

Q. Out of what, your fees? A. Yes.

Q. Do you mean fees of a character which had been allowed in similar cases before by Judge Cardozo? A. The fees that I might make out of the case.

Q. I don't know whether you said to Mr. Tilden that you sought Dr. Gomez, or whether he came to you? A. He came to me at my house.

Q. What made him come? A. He frequently comes.

Q. How long before that did you learn that he had this stock; I mean the stock of some failed Company? A. I cannot say; I am certain I heard that; but I think I had.

Q. When he spoke to you about it, did you tell him you could apply to Judge Cardozo, and he would appoint some gentleman who would make you his attorney? A. I did not state that.

Q. In what other way could fees come to you, so that you could tell Dr. Gomez that you could make his loss good? A. I had that in my mind; just exactly what was carried out I don't hesitate to say.

Q. Then you did, in the end, make good to Dr. Gomez his loss? A. No, sir.

Q. Have you paid him anything since? A. No, sir.

Q. Has he been benefited in any way? A. No, sir.

Q. Have you received any fees in that proceeding yet? A. Yes, sir.

Q. What amount? A. I forget; I think it was $1,000.

Q. By order of the Court? A. Yes, sir.

Q. By whom? A. Judge Cardozo.

Q. When? A. I don't remember.

Q. Are you quite sure the amount is only $1,000? A. It is all, I think, I have received.

Q. How long ago did you receive this? A. Only a short time ago.

Q. It was a retainer? A. On account of services. I won't be certain that I got an order. Now that I think over it, I think the money was given to me on account of my services.

Mr. PARSONS:

Q. You did say you thought you made the application to Judge Cardozo and he allowed a thousand dollars? A. Yes, sir.

Q. Are you in doubt now? A. Yes, sir.

Q. Possibly there is no order? A. Very possibly. I have not got these matters in my memory. I can ascertain in my office if there is an order.

Q. In all these various cases in which you state Receivers have been appointed by Judge Cardozo, and you have become the attorney and counsel for the Receiver, has it been your practice to apply for all the necessary orders to Judge Cardozo? A. Yes, sir.

Q. Is there any case which you can remember where you have applied to any other Judge for an order to settle your compensation or the compensation of the Receiver? A. No, sir.

Q. In every case the application was made to Judge Cardozo? A. I don't know that I have made such application in every case. In whatever cases I have made the application it was made to Judge Cardozo. I don't recall that I have made such application. The fees have been fixed upon and entered in the final decree. The only case I can think of where a final decree has been entered was in the British Commercial case, and in that case I did not make the application. It was made by consent of the parties to the litigation.

Q. Who was the Judge that made the order? A. I think it was Judge Cardozo that made that.

Q. What was the amount allowed to you? A. $5,000.

Q. For services running through what length of time? A. I think somewhere about a year.

Mr. NILES:

Q. Did I understand your question to be general as to all cases of Receiverships, or as to Fire Insurance Companies only?

Mr. PARSONS:

My question was general.

WITNESS:

I don't think of any other cases in which I applied to have

the compensation fixed. There may have been some other case.

Mr. TILDEN:

Q. Can you give a list of the cases in which you have been retained in Receiverships? A. I have never been Receiver in any case. Yes, I have. I remember being Receiver of the rent of some of Fisk's property up town. I was appointed by Judge Sutherland, I think; but I didn't receive any moneys, I think, for it. I have always declined such Receiverships.

Mr. PARSONS:

Q. You have not declined to be counsel? A. No, sir.

Q. And is it not the fact that you have been counsel where the fees of counsel have been larger than those of the Receiver, himself? A. No, sir; not that I know of.

Mr. TILDEN:

Q. From your register can you ascertain in what number of cases you have been attorney and counsel for Receivers? A. No, sir.

Q. Have you not some cash-book which will enable you to state to the Committee what amounts you have received in the last three years? A. No, sir; I have got no book that would enable me to find out. I might weed a good deal out of the books.

Q. Do you mean you have not been in the habit of making an entry of such cases? A. Yes.

(Upon request, witness stated that he would endeavor to furnish a statement of the amounts received by him as counsel of Receivers appointed by Judge Cardozo in the last three years.)

Q. Name what you can now. A. In the case of the British Commercial Insurance Company, as I told you, $5,000.

Q. Was that all? A. Yes, sir. I think I received $5,500. In no other insurance case has the matter been closed. In the "Beekman," as I have stated, I received, as I think, $1,000, and the Astor, $1,000.

Mr. TILDEN:

Q. Those are not closed? A. No, sir. The Great Western is not closed, and I think I may have received as much as a couple of thousand dollars there—perhaps more. It has been pending for, probably, fifteen or sixteen months. I have received a payment once or twice—possibly, three times. Those are all the companies I think of.

Q. Those have been within the last year or so? A. The British Commercial was some time two or three years ago. I don't

think of any other Receiverships of any Company of which I have received any amount. In some of the Receiverships of suits between partners and other parties, in reference to which Bixby has been Receiver, I have received fees, I don't think exceeding, altogether for the three years, $4,000. I should think it would be about that figure.

Q. You can make that statement complete by reference? A. I don't think I can make it complete, but I can exhaust my memory and sources of information by reference, and will try to do so.

Mr. TILDEN:

Q. Don't you keep an account of your deposits in banks? A. In check books and bank books, of course.

Q. Don't you enter the source from which your money was derived? A. Sometimes I do. I have kept a ledger account during the past year of cases in which I have acted as Referee, of cases coming into my hands.

Mr. PARSONS:

Q. Don't you keep a cash book? A. No, sir.

Q. Are you alone in business? A. Yes, sir.

Mr. TILDEN:

Q. You keep merely the account of the trust funds, and not your personal accounts? A. Yes, sir.

Mr. PARSONS:

Q. When were you first appointed by Judge Cardozo, Referee in a Sureme Court suit? A. I could not tell.

Q. Fix the date, with some approximation to accuracy, can you not? A. It was probably a short time after his taking his seat on the bench.

Q. January 1, 1868? A. Probably within a short time of that.

Q. What was your age at that time? A. Twenty-five, in 1868.

Q. Should not your books show the number of references you have received from Judge Cardozo from then to the present time? A. No, sir.

Q. Do you keep no book now? A. I do now, but did not for a long time.

Q. When did you begin to keep such a register? A. I think in the Spring of 1870—somewhere about there.

Q. Have you any means of telling the number of references which you have received from Judge Cardozo since January 1st, 1868? A. No, sir.

Q. For what portion of that period can you give the number of references received from Judge Cardozo? A. No portion.

Q. Not since you commenced your register? A. No, sir, for

this does not include every case; probably includes nearly all the references.

Q. What is the nature of the actions in which you have thus been appointed Referee by Judge Cardozo? A. All kinds.

Q. Are not the actions mainly foreclosure and partition suits in which there are infants as parties? A. No, sir, I don't know as there is.

Q. Haven't you received from Judge Cardozo a large number of references in foreclosure and partition suits in which there are infant parties? A. If you omit in regard to infant parties I would say yes, but I don't pay any attention to the fact whether they are infants A case may come through my hands without my ever knowing whether there were infant parties or not.

Q. Are you not aware of a rule of the Supreme Court of this district prohibiting entry by consent of orders of reference in suits where infants are parties? A. I think there is such a rule.

Q. Do you remember when such a rule was passed? A. I don't remember.

Q. Was it not since Judge Cardozo was elected? A. I don't know.

Q. How long have you been aware of the existence of such a rule? A. I don't know that I ever had occasion to refer to such a rule.

Mr. FULLERTON:

There is one. It existed long before Judge Cardozo became Judge?

A. I always had an impression that there was.

Q. Didn't you receive from Judge Cardozo as many as ninety-two references in the year 1868, eighty-four in the year '69, ninety-five in the year 1870, and sixty-four in the year 1871? A. I have not the slightest idea.

Q. Can you not ascertain? A. No, sir, unless an examination of the files of the Clerk's office was made. I have no means in my office.

Q. In the case of references ordered by Judge Cardozo to you, have allowances been made by Judge Cardozo to you in Partition suits? A. No, sir.

Q. In any foreclosure suits? A. No, sir.

Q. Are you quite sure about that? Positive.

Q. Have you any books present which will enable you to state the amounts which you have received in Partition suits by the order of Judge Cardozo? A. That ledger I have spoken of will show that fact in regard to suits which have come into my hands since I commenced to keep that ledger.

Q. Where is that ledger? A. Here.

The Committee here took a recess until 7:30 P. M.

The Committee met in Evening Session at 7½ o'clock.

Present: The Committee and counsel and Judge Albert Cardozo:

Gratz Nathan desired to make a statement as follows:

There are two points in my testimony in which I think I have been mistaken on reflection; one is, in regard to the time and place when the order was signed in the case of the Astor Fire Insurance Company. When I was asked in regard to that by counsel here, I located it, in my mind, in the Special Term room and the Chambers, as the place at which the application was made. On further examination there have been brought to my mind the circumstances and the time of the proceeding, and I think it is very likely that these rooms were identified in my mind with the proceeding in such a way, that when I was asked the question, I thought I remembered more than I did in regard to the time and place. I can say now, after reflection, that I have no recollection whatever in regard to the time and place of the presentation of that order. It may have been at the Judge's house or at the Special Term room or almost any other place wherever the Judge was.

Examined by Mr. PARSONS:

Q. Do you mean the order applying for the appointment of a Receiver? A. Yes, sir. The other point is this: I was asked in regard to my preliminary conversation with Dr. Gomez prior to the bringing of his suit against the Beekman Fire Insurance Company. I now remember, when he consulted me on the subject at my house at the time of his visit, I did not give him any advice on the subject: I thought over the matter and, I think, the following morning, if not then the morning following that, I wrote a note and sent it to his house, asking him to come to my office. I then advised the bringing of this suit.

Q. Is then the result of your recollection in the case of the Astor Fire Insurance Company that you cannot state with any confidence that you did not make the application at Judge Cardozo's house? A. Yes, sir.

Q. Was it not, to your best recollection, at Judge Cardozo's house? A. I cannot say it was; I may say since I was examined, I asked the Judge if he had any recollection, and he says he has none whatever.

Q. And in reference to the advice you gave Dr. Gomez, is it a fact that, in advising him to commence the suit, you were to procure the appointment of a Receiver for the Company? A. I think I advised him there, that if he would leave the matter in my hands I would bring the suit.

Q. Do you mean that he suggested in any way that his money would come back through the instrumentality of a Receiver?

A. By no means. I don't know that I detailed my plan to him. He is a gentleman with whom I am very intimate—a relation of my wife's, and would probably take my advice.

Q. Has the reflection you have given the matter enabled you to state whether you discovered the fact of his ownership of the stock of the Company through inquiry made by you of him, or through information volunteered by him to you? A. I know I first heard of the fact from the conversation of the family, in which it was mentioned to me that he would lose something by the Chicago fire, having stock in one of the Companies that failed.

Q. Will you be good enough to state whether there has been any other Insurance Company of which there was an appointment of a Receivership, where the suggestion has been made by you or by any other person to you? A. I cannot think of any other than those we have been talking about.

Q. Are you able to state that there has been no others? A. I believe at this time, positively, there had not been.

Q With whom have there been conversations with you on the subject of the appointment of Receivers of insolvent, or supposed to be insolvent Insurance Companies, such appointments to be made by Judge Cardozo? A. I don't remember any general converzation on the subject, any that related to other Companies than we have stated.

Q. Produce, if you please, the ledger to which you referred as showing the amounts received by you as Referee in partition suits the orders referring to you, which were granted by Judge Cardozo? A. I have it, sir.

Q. Where does that ledger begin? A. I could not give you the exact date; my clerk who kept it, had rather a curious way of arranging it alphabetically. I will have to go through the whole book to see which is the earliest date. I noticed here when I was glancing at the book this afternoon, an entry made in 1870, I think that was about the time.

Q. Proceed now, if you please, to state as well as you can, so far as it concerns cases entered in your ledger, the suits and the allowances made to you as Referee by Judge Cardozo, and the amounts allowed? A. The first suit that I see is Carraher against Carraher, a partition suit.

Q. By whom was the order granted? A. A judgment and the allowance was fixed be Judge Cardozo. The case of Grant against Grant the allowance was fixed $752.50 by order of Judge Cardozo.

Q. Will you give the date, if you please, in each case, when the allowance was received, and the date of the distribution? A. March, 1870. I presume it was about that time; could not tell by the ledger. A case of Lyon against Emmons; I think there was no order in that case, but that the parties all agreed upon the amount, $375.75, in March, 1871. The case of Mehlig

against Mehlig, $600, April, 1871. Mahony against Fordham, February, 1871, $520.45. Thorn against Thorn, $467.50, I think that was by consent. That was in December, 1870.

Q. In the cases of which you speak as being by consent, was not the final judgment which fixed the allowance entered by Judge Cardozo? A. No, sir; it was not fixed in any case; when I was preparing to make my distribution in partition suits, in almost every case that I had the parties have agreed with me upon the amount which I should charge for my fees; generally, or in a great many cases, I have given them notice to appear to have my allowance fixed, and in most cases they have not attended.

Q. When you say that the parties have consented you mean that they have not opposed? A. Before I made the motion the amount that I suggested they have assented to, and in many cases have fixed the amount themselves. The case of Ray *v.* Cuthill, my fees were $1,650; this book contains no date to that case. I may be able to find the date from some other source. In the case of Barr *v.* Barr, $1,352, October, 1870.

Q. State, if you please, in each case in addition, the amount of distribution? A. The amount in that case was $54,100.

Q. In that case it was 2½ per cent. on the aggregate amount of the estate sold. A. Yes, sir.

Q. I desire that by the aid of any books which you have here, you shall state the entire amount of allowances ordered to you by Judge Cardozo, from January, 1868, to the present time? A. I have no books here which will enable me to state it to any extent.

Q. Are you not in possession of books which will enable you to state those amounts? A. No, sir, except as given to you. I kept no ledger account until this commenced.

Q. Do you keep no account? A. I find two cases in the Register that are not in this book, they may be in this book but are not indexed; one is the case of Harris against Guthrie, this book does not give the amount or date.

By Mr. TOBEY:

Q. Can you give the gross amount of the sales? A. $58,950.

A. What was the amount of per centage of the allowance? A. It does not state here.

Q. What is your recollection, two and a half per centage? A. Very likely.

Q. It would be about $1,500, would it not? A. Yes, sir. The first date in the entry of Harris against Kelley—the entries are not carried out.

Q. You can approximate to the date? A. It was certainly in the early part of 1871.

By Mr. HAYES:

Q. Was it in that last case by order or agreement? A. By order. In the case of Kellogg against Kellogg there was an allowance of 2½ per cent. The premises were sold for $27,400.

Q. That would be about $680, would it not? A. I think so.

By Mr. PARSONS:

Q. Do you mean to state that you have now enumerated all the cases in which, by the order of Judge Cardozo, you received allowances for services as Referee between those nates? A. In partition suits?

Q. In any suits; allowances fixed by consent, acquiescence or by order?. A Yes, sir.

Q. Do you mean to say that there were no reference allowances which you received between those dates except those which you have stated, where Judge Cardozo made the order on which you got your allowance? A. I think that is all, sir.

Q. Do you mean that the statement you have furnished includes those cases in which the Judge made the order, although there may have been the assent previously of the parties? A. Yes, sir.

Q. Can you not, by your check-book, ascertain whether there was any other cases between those dates? A. No, sir.

Q. Will your check-book show the distribution you have made in all those cases? A. Yes, sir, probably.

Q. Can you not, by the assistance of your check-book, tell whether, between the dates you have given, there are other cases where you received allowances by the order of Judge Cardozo? A. I think very likely; probably could.

Q. Will you, without taking the time of the Committee, examine, so as to be able to-morrow morning to give a statement from your check-book and any other books you have, and to complete your answer to the question which has been put to you, of the allowances which you have received on the order of Judge Cardozo, from January 1, 1868, to the present time? A. I can't promise to do it by to-morrow morning, but I will do it as early as possible.

Q. Can you recall any case in which you received an allowance on the order of any other Judge than Judge Cardozo? A. No, sir.

Q. State, if you please, what is the largest amount which you can now recollect that you have received upon the order of Judge Cardozo? A. I remember one of $3,000; I don't remember any larger amount.

Q. Do you feel able to say to the Committee that this is the largest amount you have received on Judge Cardozo's order?

A. I feel able to say that this is the largest amount, as far as my recollection and belief serves me, at present.

Q. In what suit was that allowance received, and when? A. In the suit of Secor against Pirnie.

Q. When? A. I don't remember; think it was some time in 1870.

Q. Subsequent to March, 1870? A. I don't know, sir.

Q. Why does not your ledger contain any entry in regard to that case? A. It must have been prior.

Q. What was the percentage allowed to you? A. Can't remember; there was a large property—several pieces in this city, and several in Westchester County.

Q. How long was that case in your hands? A. A good while, sir.

Q. How long from the order of reference to the expiration of the time to take title of the purchasers at the sale? A. I could not say, sir.

Q. As much as three months? A. It might have been a good deal more than that; my impression is that is nearer a year; I could tell, probably, by looking at the papers on file.

Q. Were you Referee as to title? A. No, sir.

Q. Merely Referee to sell? A. Yes, sir.

Q. Was there more than one sale? A. Yes, sir.

Q. How many? A. As to the Westchester County property there was one sale, and also an attempted sale before that; we made all the preparations for a sale, went up there to sell, but finally adjourned the sale.

Q. Where was the other property situated? A. In this city.

Q. How many sales of property were there in New York? A. I think there were two; I know there was a bill filed by some one who claimed to be an heir of the ancestor from whom the title was derived, and there was a long delay, and finally an adjournment of the matter. It is my impression that there was a sale just before that suit was brought which went for nothing by reason of the pendancy of that suit; it is possible that that sale did not take place, for it was adjourned by reason of the commencement of the suit.

Q. Are you certain there were not more than two sales, or two occasions when you attended for the purpose of such a sale of the property in New York? A. There may have been.

Q. How many deeds did you deliver? A. Don't remember.

Q. State your best recollection? A. I should say not more than six; I have no recollection beyond that.

Q. For your services in that case are we to understand that the Judge allowed you $3,000? A. I think so.

Q. Was that by assent of the parties? A. Yes, sir.

Q. Did they arrange with you that you should receive $3,000, or was it by order of Judge Cardozo without your troubling

yourself to secure their preliminary acquiesence? A. I don't remember; I have a kind of impression that they assented to it without an order, but I won't be positive.

Q. What evidence did Judge Cardozo have of the services rendered by you for which he allowed that $3,000? A. The facts disclosed by the papers in the suit. The decree showed how much trouble was involved in it.

Q. Can you state the amount of the gross proceeds of the sale in the case of Secor against Birnie? A. No, sir.

By Mr. NILES:

Q. Very nearly? A. No, sir. I think the property in the country brought only between 50 and 60,000 dollars.

By Mr. PARSONS:

Q. Now state other allowances, not included in the testimony you have already given, which you can remember ordered to you by Judge Cardozo for your services, or rather to you as Referee in partition suits? A. There were undoubtedly some, but I can't think of them, sir.

Q. Can you recall none? A. No, sir; I have not had many partition suits.

Q. Were there references in other suits than partition suits in which Judge Cardozo has ordered to you allowances? A. None that I think of. There may have been some special proceedings in which attorneys in drawing their order have inserted the amount of my fees, but not on my application.

Q. In the cases you have referred to, what has been your practice in reference to procuring from Judge Cardozo orders directing to be paid to you the amounts you have stated? Did you, yourself, make the application to Judge Cardozo? A. Yes, sir; giving notice to the attorneys.

Q. Where have you found Judge Cardozo? A. Wherever he happened to be holding court at the time.

Q. Are you quite sure you have not called upon him for these orders on occasions where he has not been holding court? A. No, sir, I never have.

Q. Have you not called upon him at other places than the place in which he was holding court? A. No, sir.

Q. Have you never obtained such orders from him at his house? A. Yes, sir. I have always obtained such orders on notice.

Q. Have you not frequently obtained such orders either when he was not sitting at Circuit, at Special Term or Chambers? A. Always when he has been holding Special Term.

Q. Have not such applications to Judge Cardozo been made by you when he was sitting at Room 13? A. Yes, sir.

Q. In your notice in such cases, have you notified the attorneys interested to appear before Judge Cardozo at Room 13? A. It may have done so.

Q. Before what other Judges of the Supreme Court have you noticed such applications? A. Before none, sir. I may state that my practice on that subject originated from the practice that was established and approved by General Term before Judge Cardozo went on the Supreme Court Bench.

Q. State the title of the case. A. Ames vs. Ames.

Q. Reported where? A. Don't think reported.

Q. Who gave the opinion? A. Don't think there was an opinion.

Q. How do you ascertain or know the practice? A. I was informed of it and have seen the orders; that was a partition suit, and the application was made to a Justice of the Supreme Court to fix the amount of his allowance.

Q. Who was the Justice? A. Judge Barnard.

Q. The Hon. Geo. G. Barnard? A. Yes, sir; he fixed the amount of the Referee's compensation at two and a half per cent.; an appeal was taken, and the General Term dismissed the appeal.

Q. As a non-appealable order? A. Yes, sir.

Q. It was in that way that the General Term established such a practice? A. That the Referee's fees were within the discretion of the Court.

Q. Who was the Referee in the case of Ames vs. Ames? A. Peter B. Sweeny.

Q. Do you know him? A. I don't.

By Mr. TOBIE:

Q. Can you recollect the amount of that allowance? A. I I don't recollect.

Q. Simply two and a half per cent., but don't remember the amount of the property sold? A. No, sir.

By Mr. PARSONS:

Q. State whether Peter B. Sweeny, whom you spoke of, is the gentleman who has been mentioned in the newspapers as Peter Brains Sweeny and who is supposed and stated in the newspapers to have a controlling influence in public affairs, and also, as is alleged, in the administration of justice? A. He is a man extensively known as a politician in this State.

Q. Do you remember the partition suit of Berrian vs. Berrian? A. Yes, sir.

Q. What had you to do with that suit? A. I appeared in the General Term as counsel for Mr. Smith, Referee in that case.

Q. What Mr. Smith? A. Andrew J. Smith.

Q. His brother is Mr. Hugh Smith? A. No, sir;

Q. What is his relationship to Mr. Hugh Smith? A. I don't know, sir.

Q. Are you quite sure he is not a brother of Hugh Smith? A. Yes, sir.

Q. Who were the Judges of that General Term? A. The present General Term Judges, Ingraham, Barnard and Cardozo.

Q. Is that the whole connection you had with that suit to appear for Mr. Smith as Referee in the General Term? A. No, sir. The order was affirmed and the case went to the Court of Appeals, and finally I represented Mr. Lawton in the case.

Q. When did you first enter that case? In what stage of the appeal to the General Term; what was the appeal in that case? A. An appeal from the amount fixed as Referee's fees.

Q. By whom had the Referee's fees been fixed? A. I am not certain; I think Judge Cardozo?

Q. What was the amount of the Referee's fees in that case? A. I have no recollection.

Q. Do you recollect it was $2,000? A. No, sir.

Q. Do you not recollect that the allowance to the plaintiff's attorney was $2,000, and to the Referee $1,300? A. I don't remember.

Q. What was the amount of gross proceeds of the sale in that case? A. I don't remember.

Q. Was it not about $45,000? A. I don't remember. I think the allowance was 2½ per cent. on the gross proceeds of the sale.

Q. Do you remember in the suit of Berrian v. Berrian returning to the appellant's attorneys the sum of $1,300, or thereabouts? A. No, sir; I remember paying a certain amount to the attorney in the suit, who had taken an appeal in settlement of his claim, that the allowances of the plaintiff's attorney and of the Referee was excessive.

Q. Was not that payment made by your own check dated Dec. 14th, 1871? A. Very likely.

Q. Will you look at your check book and state whether that was the fact, and what was the amount of the check? A. Yes, sir.

Q. State now to the Committee what was the amount of the check? A. $1,850.

Q. Paid to whom? A. Mr. Chetwood, I think.

Q. Who was the plaintiff's attorney in that suit? A. Mr. Lawton.

Q. Can you now recall what were the allowances ordered by Judge Cardozo in this suit? Was it $2,000 to the plaintiff's attorneys and $1,350 to the Receiver? A. No, sir.

Q. How came you, when Judge Cardozo had granted the allowance and the General Term had affirmed his order, to return so large a sum as $1,850—to pay so large an amount as that to an attorney who was taking an appeal? A. The parties had agreed,

and it was after a conference or compromise, and that was the result.

Q. Was your whole instrumentality in that matter as attorney for the Receiver? A. At the close, as I stated, I represented Mr. Lawton also in the settlement.

Q. From whom did you receive the $1,850? A. From Mr. Lawton and Mr. Smith.

Q. Are you quite sure about that? A. Yes, sir.

Q. Will your check book state the amount you received from each? A. No, sir.

By Mr. TILDEN:

Q. Was there an entry in the check book on the deposit side relating to this transaction? A. Here is an entry of part of it; the rest of it was paid subsequently.

By Mr. PARSONS:

Q. State the first entry of the part of it? A. All that I find in this book is $875 from Mr. Smith and $500 from Mr. Lawton.

Q. Received when? A. I think it was the very day the payment was made.

Q. What was the day? A. 15th day of December it was deposited, including several checks, one of Mr. Smith for $875 and one of Mr. Lawton of $500.

Q. Was there any person connected with the suit either as Attorney, Referee or otherwise, except Mr. Smith and Mr. Lawton, from whom you received any part of that $1,850? A. No, sir.

Q. From whom did you receive the $475? A. I think I got it from Mr. Smith, or a part of it, and I think a part of it from Mr. Lawton.

Q. Have you any recollection of receiving any more from Mr. Smith or Mr. Lawton than your two checks, which your check book shows? A. I have no doubt I did. No affirmative recollection.

Q. The amount returned was $1,850. Does your check book show from whom the amount was received necessary to make up the $1,850? A. I don't think it does.

Q. Did you yourself provide a part of that $1,850? A. I remember something was said about it, and that it would be well to do so, but I don't think the result was that I did.

Q. What had happened in view of which you were willing to contribute a part of this $1,850? A. Nothing had happened, sir.

Q. Do you mean that you were willing yourself to pay that amount without having received anything, either the whole or any part of it? A. I do, although I still think that that order would have been affirmed.

Q. What was there in view of which you yourself furnished a part of the $1,850? A. Nothing.

Q. How much of the $1,850 did you individually provide? A. About $475.

Q. Had you anything to do in procuring that order? A. No, sir.

Q. Was there a conversation between Judge Cardozo and yourself in reference to that suit? A. No, sir.

Q. Or the allowance? A. No, sir.

Q. Never, do you mean to say that? A. Never, that I recollect. I think I can safely say, never.

Q. From whom did you receive any fee in that suit? A. From no one.

Q. Can you then explain what it was, in view of which you yourself having received no fee for the service which you had rendered, were willing to pay $475, or a part of it, upon the settlement? A. I think I have already stated that Mr. Smith asked me to appear for him at the General Term. I appeared for him and would not receive a fee from him, or any other brother lawyer, in a matter in which he was concerned; when it came to a matter of settlement, in view of the fact, as I then thought I would continue to have similar duties to perform in view of this possibility, although I did not think that that order would be reversed, still I preferred to have the law as it was, and paid that amount to stop the possible chances of a reversal.

Q. Will you permit an examination of your check-books, Mr. Nathan? A. Not unless the Committee order it; it is a book in which I enter everything, including matters of my clients, and there might be something in it which I might have to ask the benefit of my privilege.

Q. Will you permit an examination of your check-books with a view to the ascertainment of the source from which came the whole or any part of the $475 which made up the 1,850, with the amounts received from Mr. Lawton and Mr. Smith? A. I should rather not.

Q. Will you permit an examination of your check-book with a view of ascertaining the sums of money received from you and paid to you by Judge Cardozo? A. I prefer not to put my check-book in the hands of any stranger. I would feel compelled to take the direction, at least, of the Committee on the subject.

Q. Then I ask you whether you will permit an examination of your check-books, including the check-book you have not produced, with a view to the ascertainment of the monies received and paid by you to Judge Cordozo? A. I have already answered that. For no purpose would I permit strangers to examine my check-books.

Q. We now desire, Mr. Nathan, that you prepare and

furnish to the Committee, during its session to-morrow, a statement to be verified by you as a witness, under your oath, of the number of references ordered to you by Judge Cardozo from January 1st, 1868, to January 1st, 1872, the number of receiverships ordered by him in which you have been the attorney and counsel for the Receiver between the same dates, and the amounts received by you as Referee's fees during those same dates. A. It would be absolutely impossible for me to do it.

Q. I desire you to do it as far as you can, and to produce the check-book which you state is not among the number mentioned in the subpœna served on you? A. I will try and find it. I dont think it is worth while for me to attempt preparing that other paper. I could not make any headway. You have all the sources of information here except some old papers, many of which are lost or the matters are closed.

Q. Do you know a person by the name of Thomas C. Fields? A. Yes, sir.

Q. Is he also a prominent politician? A. Yes, sir.

Q. What have been the relations existing between Mr. Fields and yourself? A. No relation, except for some few years he has been connected with the same Bureau in the City Government that I have been.

Q. What is that Bureau? A. Corporation Attorney.

Q. What has been his position and yours? A. He is the Corporation Attorney, and I have been his first assistsnt.

Q. Have you occupied offices in common? A. The same round of offices.

Q. The same suit of offices? A. There has been no room we have used in common.

Q. Your offices communicating? A. Yes, sir.

Q. How long has that been the case? A. For quite a while.

Q. Are you a prominent politician of the City of New York, and has that enabled you to procure your position as Assistant Corporation Attorney of New York? A. I was appointed by Gen'l McMahon, when he was Corporation Attorney.

Q. When did you become acquainted with Gen'l McMahon? A. 1865.

Q. When were you appointed by him? A. Probably within six months afterwards.

Q. Was he an acquaintance of Judge Cordozo's? A. No, sir.

Q. Are you quite sure about that? A. Don't think they were acquainted; they are acquainted at present.

Q. Who was the landlord of the building where the offices are that are occupied by Mr. Field and yourself? A. The offices are the offices of a Bureau of the City.

Q. Who is the landlord? A. Fernando Wood.

Q. What rent do you pay? A. I pay none. I hold my pos-

session of the portion of the suit of offices as an incumbent of my position in the Bureau.

By Mr. FULLERTON:

Q. Had Judge Cardozo any interest in your fees as Referee? A. No, sir; never at any time.

Q. Did he contribute any part of that money which was refunded, of which you have already spoken? A. No sir.

Q. Were you interested at all in the allowance, to any extent, of A. J. Smith? A. No, sir.

Q. I want to ask you something about the habits of Judge Cardozo holding Courts—the amount of labor which he has performed since he went upon the bench? A. Judge Cardozo is a very strict business man. His life is what most people call a very slow one; he devotes himself almost entirely to his judicial duties. I never knew him to attend any public amusements, and don't remember to have seen him out of an evening more than once or twice in my life. You can always find him at his house at night engaged looking over cases, or with his family. He holds court almost every day in the year, except during the summer vacation, from 9½ o'clock in the morning and remains there generally until late in the afternoon, where he is always in attendance to meet the requirements of the Bar; always ready to grant orders; always holds Special Term in Chambers, as I understand it, for the accommodation of members of the Bar.

Q. I want to ask whether his disposition to do business early and late is not without respect to persons? A. Undoubtedly so.

Q. How about his holding court for other Judges when they wish to go away? A. I have known him to do it very frequedtly.

Q. Do you know of lawyers visiting his house at night for the purpose of transacting business? A. Yes, sir.

Q. Is it not a very common occasion in cases of emergency? A. Yes, sir; he is always there.

Q. You have not been in the habit of arguing cases before Judge Cardozo? A. I don't think I argued but two cases that I think of before him in my life. I have always refused absolutely, though requested probably, I would say on an average once a week for the past four years. I have always absolutely refused to act as counsel in matters coming before him.

Q. What do you understand is the ordinary allowance for Referees in partition suits? A. I understand it to be in the discretion of the court 2½ per cent.

Q. That is without reference to the practice of particular Judges? A. I have always understood it to be so.

Q. Andrew J. Smith is a respectacle lawyer of this city? A. Yes, sir.

Q. Been in practice many years? A. Yes, sir.

By Mr. TILDEN:

Q. Where is his office? A. No. 132 Nassau street.

Q. Anybody else in the office with him? Is he a member of a firm? A. No, sir.

Q. Did he formerly have an office in common with anybody? A. Yes, sir; Mr. James M. Sweeny.

Q. Was he a partner of James M. Sweeny? A. I never heard so. I don't think that Mr. James M. Sweeny ever practiced law.

By Mr. OWEN:

Q. Mr. Nathan, did those Insurance Companies turn out to be insolvent, with the exception of the Mercantile? A. Utterly so. I don't believe that either of them could pay 40 cents on a dollar to their creditors.

Q. Will you state to the Committee the relationship between Nath'l Jarvis and Judge Brady? A. Mr. Jarvis married Judge Brady's sister.

Q. What was his relation with T. H. Lane? A. The same relation.

By Mr. PARSONS:

Q. Will you be so good as to state to the Committee the reason why you have been applied to as often as once a week to argue cases before Judge Cardozo? A. I have no doubt, sir, it was in consequence of the idea that I might have some undue influence with him, an idea which the intemperance of the press has rather encouraged in these days and led well meaning people to believe that such abuses existed, and in many cases also there were corrupt motives on the part of the counsel, undoubtedly, who came to me. They must have been corrupt themselves to have assumed that another was corrupt or to be influenced in that way. I have had as much as $20,000 offered to me merely to be counsel in a case without doing any particular amount of work, and I have never accepted a retainer in any matter coming before Judge Cardozo. I never appeared before him, so far as I think, but twice, and those were in proceedings where I could not help it. I have never spoken to him out of court or in court in regard to any matter that was before him or to come before him in any way.

Q. Was the Judge in the $20,000 case Judge Cardozo? A. Yes, sir.

Q. You have stated that you have understood that there was a practice in the city of New York, without any reference to particular Judges, to allow two and a half per cent. Can you name any other Judge than Judge Barnard who has ever granted such an allowance? A. Not to my personal knowledge.

Q. Have you ever heard of a case, with the exception of Judges Barnard and Cardozo, where an allowance has been granted as large as 2½ per cent.? A. I don't recall any particular case.

Q. Name those cases you have argued before Judge Cardozo? A. I think the first was the case of Mooney *vs.* The British Commercial Insurance Company; the other was a motion in the Astor Fire Insurance Company case arising from a question of priority of the respective Receivers.

H. Have you forgotten the Trial at Special Term, before Judge Cardozo, of Muldoon *vs.* Wood? A. I did not argue that case.

Q. Did you sit by as counsel? A. A very short time.

Q. Did Judge Shea sit by the counsel on the other side? A. Yes, sir.

Q. Is Judge Shea a friend of Judge Cardozo? A. Yes, sir.

Q. Under the circumstances of Judge Shea sitting by the counsel on one side and you sitting on the other side, how long was it before Judge Cardozo made his decision? A. Don't know, sir.

Q. How long since the suit was tried? A. Several years; I think it was ultimately settled. If the Committee will allow me to volunteer one other statement on the record here, I will make it. Something has been said with regard to the presentation of these various orders to Judge Cardozo and the selecting of him as a Judge for the presentation. I want to say I never presented any order to him which I was not confident was a right one to be granted and eminently proper, particularly because I would not want to do it, and particularly because I felt confident he would not sign it. I never presented any order to him of which I had the slightest doubt that it was not eminently proper.

By Mr. FULLERTON:

Q. Did you ever present an order in your life to him that he did not read all the papers which were presented with care? A. No, sir; never, except it was by consent or on a small matter.

By Mr. PARSONS:

Q. Were you not equally satisfied that the Judge regularly sitting at Chambers would grant you the order to which you were entitled? A. It might, and might not be. It was a matter of great convenience, having intimate social relations, to be able to

choose my own time to present an *ex parte* order instead of standing hour after hour in Chambers, and undoubtedly I thought it was entirely right to have the benefit of my personal relations with Judge Cardozo and took the benefit.

ANDREW J. SMITH, sworn:

Q. Are you an Attorney and Counsellor at Law? A. Yes, sir.

Q. And have been for how long? A. For fifteen years and upwards.

Q. Do you know Mr. James M. Sweeny? A. Very well.

Q. Have you and he occupied offices together? A. Yes, sir.

Q. Any business connection between you? A. Yes, sir.

Q. Down to what time? A. Quite recently.

Q. How recently? Down to within a few months.

Q. A partnership arrangement? A. Yes, sir.

Q. Is James M. a brother to Peter B. Sweeny? A. Yes, sir.

Q. What is your own relationship to Mr. Hugh Smith? A. A cousin.

Q. Do you remember the suit of Bowne vs. Leveridge? A. Yes, sir.

Q. What had you to do with that suit? A. We were counsel for James M. Sweeny, who was Receiver.

Q. Did not Mr. Sweeny hold at that time the position of Clerk of the Superior Court? A. He did.

Q. When did you learn he had been appointed Receiver in that suit and from whom? A. From himself.

Q. Who appointed him Receiver? A. Judge Cardozo.

Q. Has Mr. Sweeny been frequently appointed Receiver in suits by Judge Cardozo? A. Four or five times, I think.

Q. Prior or subsequent to the appointment of Mr. Sweeny in the case of Bowne *vs.* Leveridge? A. Before, probably, and a few afterwards.

Q. When was he appointed Receiver in the suit of Bowne *vs.* Leveridge? A. It was, I think, in the month of December, 1869 or 1870. Can't tell positively, but the order will tell. I know it was in the winter, and I think in the month of December.

Q. Was the appointment of Mr. Sweeny as Receiver an *ex parte* appointment? A. I think it was; am not sure. I think there was an order to show cause, appointing him Receiver in the meanwhile, and a motion was made subsequently to continue the *ad interim* Receivership. I think he was appointed Receiver, and an order was made to show cause why a Receiver should not be appointed, and in the meantime Mr. Sweeny was appointed Receiver.

Q. How shortly after the *ex parte* appointment was the motion made for appointing a Receiver? A. I don't know, sir.

Q. Did you attend upon that motion? A. No, sir.

Q. Was it prior to the hearing of that motion that you became counsel to Mr. Sweeny as Receiver? A. I became his counsel immediately.

Q. Did Mr. Sweeny take possession of the property for which he was appointed Receiver? A. Yes, sir; he and I went over to Brooklyn.

Q. What was the value of the property of which a Receiver was appointed in that suit? A. Two or three millions of dollars, I think.

Q. How long did Mr. Sweeny continue to be Receiver? A. I think it was more than a year, or about a year.

Q. Was an order subsequently made by Judge Cardozo fixing the compensation of Mr. Sweeny and yourself as counsel? A. No, sir.

Q. Was an order made confirming the report of the Referee, by which order the fees of the Receiver and the compensation of yourself as attorney and counsel were fixed by Judge Cardozo? A. No, sir.

Q. By what Judge? A. Judge Cardozo ordered the Receiver's account to be passed before Mr. Jarvis, who, in the same order, was made to fix the compensation as Receiver. We attended before Mr. Jarvis with our accounts, and they were passed after fixing the compensation of the Receiver. The report was filed, and after that exceptions were filed, and after several motions, the confirmation of the reports came up before Judge Wheeler, who confirmed it.

Q. What was the amount of the fees of the Receiver, and what the fees of the counsel of the Receiver? A. The fee of the Receiver was $5,000. He had me paid $3,500, which appeared in the account, to which no objection was made by the parties.

Q. What then was the aggregate amount that that Receivership cost the estate? A. $8,500.

Q. Were there not other expenses than those of the Referee which the Receivership cost? A. Yes, sir; think the fees were some $200.

Q. Were there not disbursements of the Receiver with which the estate was charged? A. The only disbursements that I know of was the commissions paid the agent for attending to the property, and that would be incurred any way.

Q. Who was the agent? A. Mr. Keyser.

Q. What Mr. Keyser? A. Attached to the office of the Clerk of Common Pleas.

By Mr. FULLERTON:

Q. Do you recollect whether that case has been tried? A. I have heard subsequently that it has been tried.

Q. Before whom? A. Judge Sutherland.

Q. Did you hear how it resulted? A. As far as the real estate was concerned, the judgment was for the defendants.

Q. So far as the whole controversy was concerned? A. I don't know.

By Mr. FLAMMER:

Q. You say that there were some exceptions filed to the report of Mr. Jarvis? A. Yes, sir; it came up for confirmation before Judge Sutherland, and he confirmed it.

By Mr. VAN COTT:

If the Committee please, I will read the order appointing a Receiver *ad interim*, before Judge Cardozo, at Special Term, 30th December, 1869; and I will read the papers hereafter mentioned, viz.: the complaint and the answer of the defendant, and the order of the Surrogate of the County of Kings, on the 13th July, in the matter of John Leveridge, Hermanus B. Duryea, against the Bowne Estate. This was filed December 30th, 1869, and bears the initials of Justice Cardozo. Offered in evidence, and marked "Specification 10 A." We call attention to the minute in the Chamber book of Justice Cardozo, p. 496, which contains "Present Dec. 28th and Dec. 31st, but it don't show the Justice sitting on that day—on the 29th or 30th of December."

By the CHAIRMAN:

Q. In what form do you propose to put that in evidence?

By Mr. VAN COTT:

A. The books are in evidence; I simply refer to the book stating that I exhibit the page which shows the dates of December 28 and December 31st, and does not show Judge Cardozo to be sitting on the 30th December.

Mr. PARSONS. The testimony of Mr. Beamish stated that Judge Cardozo did not, on the 30th December, and there is no entry that he did sit on that day.

Mr. VAN COTT. Then I ask the clerk to make the entry that the minutes don't show that Mr. Justice Cardozo was sitting at all during the month of December, 1869. I produce also from the files, an order made in the same manner in the same connec-

tion at Special Term, on the ——— (blank date) of November, 1870, endorsed, "Filed Nov. 25th, 1870."

By Mr. OWEN:

Q. What date in November?

Mr. VAN COTT. A. The date is not in the order, but it is endorsed "Filed 25th November." This order contains numerous recitals, "The order was made and entered in this case December 30th, 1869, appointing Mr. Sweeny temporary Receiver," and thereafter was wholly vacated and set aside. Second, "Referring to Mr. Jarvis to pass the account according to the practices of Court to present his report, to the end that such further order should be made by the Court, etc."

By Mr. FULLERTON:

Q. Have you the opinion that Judge Cardozo delivered? A. No, sir.

(Offered in evidence and marked Specification "10 B.")

Mr. PARSONS. In that connection we also call attention to the minute book of the Chambers, Special Term, for the month of December, 1869. That the Justice who held the regular Chambers Term for the month of December, 1869, was the Hon. Daniel P. Ingraham.

Mr. PARSONS—When an unjustifiable order is made, significance results from the fact that it was made, not by the Judge itting at Chambers, but by another Judge.

Mr. OWEN—I think that the result shows that the property was secured.

Mr. FULLERTON—The result shows that those trustees for years had been perpetrating fraud.

Mr. VAN COTT—It does not touch the merits of the Receivership.

Mr. PARSONS—The material point is that Judge Cardozo himself subsequently made an order vacating the Receivership.

RICHARD P. H. ABELL, sworn:

Q. What, during the past few years, has been your occupation? A. For the last fourteen months Clerk at the Penitentiary, Blackwell's Island.

Q. Who is the Warden? A. John Fitch.

Q. Has he been in attendance on a subpœna during the past few days? A. Yes, sir.

Q. Were you subpœnaed to produce, and do you produce from the records of Blackwell's Island, certain original writs of *habeas corpus*, with the returns made thereto? A. Yes, sir.

Q. Also the final orders made by the Justice upon the writ? A. Yes, sir.

Q. For what years have you produced such writs? A. 1868, 1869, 1870 and 1871, aad January and February, 1872.

Q. Look at the papers in the box now placed on the table before the Committee, and state whether they are the papers to which you refer? A. Yes, sir.

Q. State, if you please, what is the practice in respect to the discharge of a prisoner on a writ of *habeas corpus* to produce the body of a prisoner held on final commitment at Blackwell's Island; upon whom is the writ served? A. On the Warden.

Q. What does he do with it? A He makes a return to the writ and sends down a copy of the writ with the prisoner.

Q. Where? A. To the Court.

Q. To what Judge? A. The Judge before whom the writ is made returnable? A. Yes, sir.

Q. What becomes of the prisoner? A. Sometimes he is discharged and sometimes remanded; when he is discharged that is the last we have to do with him.

Q. In the case of the prisoners for the production of whose bodies these writs were issued, were the prisoners either remanded or discharged, and if remanded, were they to your custody? A. Not always to our custody; sometimes they were remanded to the Tombs.

Q. Was then this the fact with reference to the prisoners produced upon the writs now upon the table of the Committee, that the prisoners were either discharged or remanded to your custody or to the Tombs? A. Yes, sir.

Mr. NILES:

Q. When the case was finally disposed of, were they not remanded to your custody—remanded to the Tombs—pending adjournment, but when finally disposed of sent back to you? A. Sometimes set back to us.

Q. For the balance of the sentence? Pending adjournment they were sent to the Tombs, but when the case was finally disposed of they were discharged or returned to you to serve out the balance of their term? A. Yes, sir.

By Mr. PARSONS:

Q. Do you know the law firm of Howe & Hummel? A.

I have seen them, but am not personally acquainted with them.

Q. Do you know them as attorneys who produced many of the writs before the Committee? A. Yes, sir.

Q. Have you any knowledge of the subject of amounts of money obtained by them from prisoners discharged upon any of these writs of *habeas corpns*? A. I don't know only from hearsay.

Q. Whom have you heard speak on that subject? A. I have heard the prisoners say, that is all.

Q. Do you mean that you have heard them speaking of sums of money that they were compelled to pay for their discharge? Have you any knowledge on the subject of statements made by Messrs. Howe & Hummel to prisoners of the sums in considertion of which they could be discharged upon writs of *habeas corpus* while they were being held on final committal?

Q. The question is whether you have any knowledge on that subject? A. I have no knowledge that I can swear to—nothing but hearsay.

Q. Have you ever been prent when there have been statements made by Howe & Hummel or either member of that firm to prisoners with reference to this subject. A. Yes, sir; there was one case.

Q. What case was that? A. Madame Beaumont.

Q. Do you mean Adelaide Beaumont? A. Yes, sir.

Q. Where did you hear any statement of that kind made? A. In the office.

Q Who were present? A. I could not tell exactly; two or three present, I guess.

Q. Who, Howe or Hummel? A. Mr. Hummel.

Q. Was Madam Beaumont present? A. Yes, sir.

Q. And you were present? A. Yes, sir.

Q. Who also was present that you can now recall? A. I don't know; I was merely called to the railing of the office.

Mr. PARSONS.—If the Committee will permit I will ask Mr. Abell to state that conversation, leaving it to the direction of the Committee whether they think it is suitable or not as testimony. We desire to have the conversation and propose to connect it with other circumstances.

(Permission granted.)

Q. State what the conversation was? A. Madame Beaumont agreed to give Howe & Hummel a certain sum of money to get her out of prison. In their talk she came to the railing and said "Will you witness this Mr. Abell." I told her yes, I would, and I did.

Q. Was any amount mentioned? A. I don't know whether it was $1,000 or $1,500.

Q. Was anything said as to the way in which she would get out? A. Nothing to me; the prisoners have all got to come into the office to do their talking to the visitors; they have seats around; I am inside of the railing; but at this time she merely came up to the railing calling me to hear this agreement. He was to get her out for this sum of money.

Q. Was anything said about any Judge with regard to the matter? A. Nothing at all.

Q. Was she subsequently discharged on *habeas corpus*? A. Yes, sir.

Q. How shortly after this conversation? A. Oh! I think she went down twice after that.

Q. Had she been down previously? A. Yes, sir.

Q. Is the writ upon which she was discharged among the papers placed on the table of the Committee? A. It should be there.

Q. Look at the papers now produced, and state whether they are the writ, copy of commitment and return in the case of Adelaide Beaumont? (Papers produced.) A. Yes, sir.

Mr. PARSONS.—I think possibly the Chairman had better mark those papers separately.

(Offered in evidence, and marked "II," Charge "A."

By Mr. PARSONS:

Q. Will you look at the papers now produced from the writ placed by you on the table of the Committee, and state whether they are the writ and papers on which she was remanded prior to her final discharge? A. Yes, sir.

(Offered in evidence, and marked "II" Charge "B" and "II" Charge "C.")

Mr. PARSONS.—The first paper in order of time is a writ of *habeas corpus* dated Aug. 17, 1871, directed to John Fitch, Warden of Penitentiary, Blackwell's Island, commanding him to have the body of Adelaide Beaumont before one of the Judges of the Supreme Court, on Aug. 19th, 1871, at 10½ o'clock A. M.

"Allowed, Aug. 18th, 1871. Albert Cardozo, Justice of Su-
"preme Court. Writ dismissed. Prisoner remanded Aug. 19th,
"1871. No Judge present. William F. Howe."

It also contains an endorsement with two orders of adjournment: "A. S. Sullivan, Dist. Attorney. Prisoner remanded to "the Penitentiary."

Q. Who is A. Sullivan? A. I do not know.

Q. Don't you know the Assistant District Attorney? A. No, sir.

Mr. PARSONS. The second paper in order of time is a writ of *habeas corpus*, an endorsement on which is erased, which seems to have been done subsequently. Similar to the preceding, dated August 23d, 1871, and returnable August 24th, 1871. "Allowed by Judge Sutherland, August 23d, 1871." The return states that Adelaide Beaumont is in the custody of the Warden, as being the prisoner named in the next original paper, which is a commitment dated August 18th, 1871, by a Court of Special Sessions of the Peace, adjudging Adelaide Beaumont guilty of misdemeanor for keeping a disorderly house, and sentencing her to be imprisoned in the Penitentiary for a term of six months, and pay a fine of $500.

By Mr. NILES:

Q. Is that the usual form of commitment on final conviction? A. Yes, sir.

Mr. PARSONS. I would state to the Committee that the only circumstance in respect to which there is any difference between any of these commitments is this: in some it is stated that two Judges composed the Court, and in others only one, as here; that there was present at the conviction Hon. Joseph Dowling, Police Justice, elected in the Second Judicial District, the Justice elected in the Fifth Judicial District being absent through disability. The endorsements on these papers are:

"Prisoner remanded to the Penitentiary, Tuesday, Aug. 29, 1871. J. Sutherland, Justice of the Sup. Ct. Adjourned to Thursday, Aug. 31, to 11½ o'clock A. M. In the meantime, the prisoner remanded to the Penitentiary." "Adjourned to Monday, Sept. 4, 1871." "Adjourned to Sept. 7, 1871, 10 A. M. In the meantime the prisoner remanded. R. H. Jerome, Assistant District Attorney at that time. Adjourned to Sept. 18, 1871, 11 o'clock S. B. Garvin." "Writ dismissed and prisoner remanded, Sept. 18, 1871. G. G. B." (The signature of Judge Barnard.)

The third paper in order of time is a writ of *habeas corpus*, dated Sept. 29, 1871, similar in all respects to the preceding, returnable Oct. 4, 1871. Allowed, Sept. 29, 1871, by Justice Cardozo, with a return and copy of commitment precisely the same as the preceding, and this final endorsement:

"Prisoner discharged, Oct. 4, 1871. A. C." (the handwriting of Justice Cardozo).

By MR. OWEN:

Q. That you consider an improper and unlawful act, the discharge of that prisoner? A. We do.

By MR. PARSONS:

Q. Was there more than one conversation heard by you when anything was said as to the amount necessary to be paid by Mrs. Beaumont? A. No, sir.

Q. Do you know how much she did eventually pay? No, sir.

By MR. FULLERTON:

Q. Do you know whether this conversation took place before or after this woman was taken down the first time? A. I think she was brought down once before that and twice after, before she was discharged.

Q. You never saw Judge Cardozo before? A. No, sir.

THOMAS RAYWOOD, sworn:

Q. What is your occupation? A. Keeper in the New York Penitentiary.

Q. How long have you been so employed? A. At the Penitentiary about three years, the rest of the time at the workhouse; that is six years altogether.

Q. What duty have you had in respect to the production of prisoners mentioned in writs of *habeas corpus* issued by the Judges of the Supreme and other Courts to the warden of the Penitentiary at Blackwell's Island? A. My duty there is to fetch the prisoners down on a writ to the District Attorney's office, from which they go to the Court.

Q. Do you accompany the prisoners to the Court? A. Yes, sir.

Q. How long has that been your duty? A. Since October, 1870.

Q. Who discharged that duty prior to October, 1870? A. A man by the name of Bernard Mullen.

Q. Where is he now? A. His wife is employed in the Almshouse, and he also.

Q. Do you know the law firm of Howe & Hummel? A. Yes, sir.

Q. How long have you been acquainted with the persons composing that firm? A. Since October, 1870.

Q. Do you know of the procurement by them from Judge Cardozo of the discharge of prisoners held at Blackwell's Island on final conviction at the Court of Special Sessions of the Peace?

(Objected to.)

Q. Have such discharges been on the order of Judge Cardozo? A. Yes, sir.

Q. And the attorneys who procured the discharges were Howe & Hummel in such cases? A. Yes, sir.

Q. Do you remember a case in which the discharge has been obtained from any other Judge than Judge Cardozo, with the exception of Judge Barnard? A. Yes, sir; I think there is one, Recorder Hackett or Bedford at the General Sessions.

Q. Is that the only other case? A. That is the only other case since I have had the prisoners.

Q. Do you know anything on the subject of amounts of money which have been obtained by Howe & Hummel from persons in consideration of the procurement by them of such discharges? A. No, sir; not at all times.

Q. Have you known of any such cases; A. I have known of one case of which they had charge, and that is the case of Mrs. Beamont.

Q. Adelaide Beaumont? A. Yes, sir.

Q. State to the Committee what you know in reference to that case? A. All I know is that, I had this woman down on a writ which was in my charge, and she went to the District Attorney's office, and from there to the Counsellor's office, and from there she went to the bank and received $1,000.

Q. What did she do with the $1,000? A. She paid it at Mr. Howe's office; he received the money, and gave her a receipt in return.

Q. He received the $1,000? A. Yes, sir.

Q. Prior to that time had you taken Adelaide Beaumont a number of times to the Court upon a writ of *habeas corpus* when she had not been discharged? A. Yes, sir.

Q. Did you also take her there subsequently to that, a number of times after the time that the $1,000 was paid, before she was discharged? A. Yes, sir; I think three times subsequently.

Q. Were any other amounts of money obtained from her by them before her final discharge? A. No, sir; not that I know of.

Q. Have you heard anybody say anything on that subject? A. No, sir.

Q. Have you heard anything on the subject, that more money would be necessary from Madame Beaumont? Q. Yes, sir.

Q. Whom did you hear speak on that subject? A. The counsel.

Q. Whom do you mean by the counsel? A. Mr. Hummel.

Q. How shortly after that conversation was she discharged? A. I think it must have been two or three weeks.

Q. How many times, subsequent to that conversation, was she taken to the Court? Twice, I think.

Q. Who eventually dischargrd her? A. Judge Cardozo.

Q. Do you know whetehr her husband, Mr. Beaumont, was also held on Blackwell's Island at the same time? A. Yes, sir.

Q. Did the same process occur, with reference to his discharge? A. No, sir.

Q. Do you know anything about any money being paid by him? A. No, sir.

Q. Or anything said in reference to money? A. No, sir.

Q. Who discharged him? A. Judge Cardozo.

By Mr. HILLS:

Q. How long was he sentenced for? A. Six months, and a fine of $500, and committed until paid.

By Mr. NILES:

Q. Was Mrs. Beaumont discharged the first time you saw Judge Cardozo sitting at the court? A. No, sir.

Q. Did you find Judge Cardozo, on every occasion when you took her to the court room? A. No, sir.

Q. How many times did you find him there when you went there with Mrs. Beaumont? A. To the best of my belief, we did not find him at all; did not go before him.

Q. Not until the time she was finally discharged? A. Yes, sir.

By Mr. FLAMMER:

Q. Was she taken to the Tombs at any time? A. She was remanded to the Penitentiary, at all times.

By Mr. TOBEY:

Q. Was the District Attorney present on the final discharge, when she was discharged? A. No, sir.

Q. Anybody representing him from the District Attorney's office? A. No, sir.

By Mr. FULLERTON:

Q. Did not Judge Cardozo always require the District Attorney to be present, or some one representing him? A. Yes, sir.

Q. You went right to the District Attorney's office the first time she went down—that was the rule? A. Yes, sir.

Q. Judge Cardozo did not know anything about them going to Howe & Hummell and to the bank? A. No, sir; I don't suppose anybody knew but the counsel and myself.

Q. They do a large criminal business? A. Yes, sir.

Q. Have you known of any case where the District Attorney or one of his assistants came in and assented to the discharge of a prisoner? A. Yes, sir.

Q. How frequently did that occur? A. Three times to my knowledge.

By Mr. PARSONS:

Q. Discharged or remanded with the District Attorney's consent? A. No, sir; the District Attorney had to appear in all cases; in fact here was only one, and that was a writ issued for a man named Russell Gorman, remanded over to Superintendent Kelso; that is the only one I know of.

Q. What happened? What do you mean, that there were three cases where the District Attorney consented? A. (No answer.)

By Mr. NILES:

Q. Do you mean by the District Attorney's consenting that the prisoner was discharged? A. I remember that the prisoner, on his giving consent, was admitted to bail or on his own recognizance.

Q. In the other cases did the District Attorney object to the prisoners being discharged? A. In some cases.

Q. How, generally? They always opposed the writ with the exception of these three times.

By Mr TOBEY:

Q. Did I understand you that the District Attorney was not in court when she was discharged? A. He was not in.

By Mr. OWEN:

Q. On the occasion when this woman was discharged, in bringing her down did you go first directly to the District Attorney's with her? A. Yes, sir.

Q. Who did you see there at that time? A. I saw Mr. Sullivan.

Q. Did you tell him what you were there for? A. I went into the office with the counsel.

Q. What did he say in reference to what you should do to the prisoner? A. The counsel stated to him that I had the prisoner on a writ, mentioning her name, Mrs. Beaumont, and stated that he had the consent of Judge Dowling on that writ in that case. I understood that it was all that was necessary, and if I recollect aright Mr. Sullivan said he was satisfied.

Q. Mr. Sullivan was the Assistant District Attorney? A. Yes, sir; he was the one who was present whom the counsel Mr. Hummel, spoke to in reference to the case of Mrs. Beaumont.

Q. Who was Judge Dowling? A. A Judge of the Special Sessions.

Q. And who committed the prisoner? A. Yes, sir.

Q. Did Mr. Sullivan or any clerk from the District Attorney's office accompany you to Judge Cardozo? A. No, sir.

Q. Did you hear any statement from Judge Cardozo of what had happened on that occasion? A. No, sir.

Q. Were you directed to go over to Judge Cardozo on that occasion? A. Yes, sir.

Q. Do you know whether the Judge did not informally require some person from the District Attorney's office to represent him and always to be present in Court on the occasion when there was an application to discharge a prisone.? A. Yes, sir.

By Mr. PARSONS:

Q. Do you know a room in the Court House called Room 13; a room in the second story where Judge Cardozo sits sometimes? A. Yes, sir.

Q. Have any of these discharges by Judge Cardozo been made in that room? A. There was one person discharged on bail.

Q. Had you not frequently, on these writs of *habeas corpus*, taken prisoners to that room? A. No, sir.

Q. Are you quite sure about that? A. Quite sure.

Q. What was the room where you did go; different rooms? A. No, sir, thirteen was on the second story.

Q. Was that the room you generally went to; the Court room? A. The Supreme Court.

Q. Can you describe the room? A. The Supreme Court Chambers is on the second story, on the south side of the Court House.

The Committee adjourned until 10 o'clock Saturday morning, February 24th, 1872.

SATURDAY, FEBRUARY 24th, 1872.

The Committee met this morning at 10 A. M.

Present, Committee and Counsel.

MORTIMER SMITH, who was sworn and examined as follows, by Mr. Parsons:

Q. Are you connected with the Erie R. R. Co., and if so, how long have you been so connected? A. I have been connected with the Company between seven and eight years. I am now Assistant Secretary.

Q. Did you know Mr. Jay Gould, and did you know Mr. James Fisk, Jr.? A. I know Mr. Gould, and did know Mr. James Fisk, Jun.

Q. When did Mr. Gould become the President of the Company? A. I think it was in July, 1868.

Q. And when did Mr. Fisk become the Treasurer? A. He never became Treasurer.

Q. What office did he hold? A. He was Vice-President and Comptroller.

Q. Down to his death? A. No, sir; he resigned, I believe, his position of Vice-President before he died.

Q. When did he become Vice-President and Comptroller? A. He became Comptroller, and afterwards was elected Vice-President.

Q. When did he become Comptroller? A. In October, 1868, or 1869, I don't remember which.

Q. When did he become Vice-President? A. I don't remember in what year it was.

Q. Do you know Mr. Wm. M. Tweed and Mr. Peter B. Sweeny? A. I know Mr. Tweed and have seen Mr. Sweeny; I cannot say I am acquainted with him.

Q. They have been Directors of the Erie Railway Co. A. They have.

Q. When did they become such directors? A: Mr. Sweeny was director but a short time only, Mr. Tweed was director until a few months before Mr. Fisk died, and I don't remember the dates when they became Directors.

Q. Was it as early as the year 1868? A. I think Mr. Sweeny became connected with it in 1868.

Q. How about Mr. Tweed? A. I don't remember.

Q. Did he become a director as early as the year 1869? A. I think he did.

Q. What part of the year 1869? A. I think about October. I cannot be positive as to the dates. I cannot remember.

Q. You think October, 1869? A. Yes, sir.

Q. At an annual election? Yes, sir.

Q. Can you tell the date in October when the annual election are held? A. They are held in the second week in October in each year.

Q. And was it at that time in the year 1869, according to your best recollection, that Mr. Tweed became a director of the company? A Yes; I cannot be positive.

Q. And Mr. Sweeny had been a director since the preceding year? A. I think he had.

JAMES C. HAYES, sworn and examined by Mr. Van Cott:

Q. You was sworn last evening? A. Yes, sir.

Q. Did you, as attorney for the plaintiff, file the bill of complaint in the Supreme Court, first district, in the case of Elizabeth Rodman Bowne against John Leveridge and others, in October, 1869? A. As trustees under the will of Samuel Bowne? Yes, sir. There are two suits, if you will allow me to explain; one under the Will of Gilbert R. Bowne, and one under the Will of Samuel Bowne.

(The witness here produced the original complaint in the above case in the Supreme Court, first District, in which Judge

Cardozo made an order on the 30th day of December. Complaint marked Specification 10 D.)

Q. Did you on that day and on that complaint and other papers apply to Judge Cardozo for the order? A. I applied two or three days before on that complaint and other papers to Judge Cardozo for the order.

Q. Had you prepared the order which you submitted with the papers when you made the application? A. I cannot say that I had prepared the order at that time.

Q. Had you prepared an order which you submitted on or before the 30th of December, 1869? A. I think I had.

Q. Was that the order which Judge Cardozo made on the 30th of December, 1862, or a different one? A. It was a redrawn one.

Q. I am not speaking of the first one you presented, which was a redrawn order? A. The one which he finally signed was a redrawn order. I am not certain about that. I carried up some papers, and applied to Judge Cardozo for an order appointing a Receiver.

Q. Was it not for an order to show cause? A. I think it was for an order appointing a Receiver.

(Showing witness a paper):

Q. Look at that and see if that is your affidavit; see whether that don't refresh your recollection? A. I think I joined the two orders there together, mistakenly; I can't say because I know the trust fund order was not applied for here, but in October; I apprehend I have made some mistake there, but I cannot say where it is.

Q. The application on the 30th of December, was, for an order to show cause, or for an order to appoint a Receiver immediately, you cannot state? A. I could not with any degree of certainty.

Q. This affidavit was sworn on the 8th day of February, 1871; was not the matter fresher in your recollestion at that time, than now? A. I don't know that it was; I think I recollect the matter.

Q. Do recollect then, and now was it or not true that you then applied to Jude Cardozo, as stated in this affidavit, for an order to show cause why a Receiver should not be appointed. A. There is a mistake in that affidavit; I didn't apply on the $30,000 trust fund, for an order for Receiver, I don't think.

Q Don't you know? A. I know I did not at any time.

Mr. NILES. What we want to know, is whether in the other case, you first applied for an order to show cause, or for an order to appoint a Receiver, *ex parte*? A. I think it was for an order to show cause perhaps; I don't know that the order was before drawn. I went up there to lay these papers before the Judge, and to see what orders would be made in the case, whether it was for a Receiver absolutely in the first instance, or whether it was

for——; well, I had in my head to get an order for a Receiver, or to get an order to show cause; I am not very positive now.

Mr. VAN COTT. Didn't Judge Cardozo, in answer to your suggestion that you wanted an order to show cause, tell you it was a case for a Receivership, and direct you to draw an order for the appointment of a Receiver, and to show cause? A. I cannot state what the conversation was; I know that he wished to see the papers in the case.

Q. That don't answer my question; did he or did he not direct you to draw an order for a Receiver, *ad interim*, and to show cause. A. I think he did; he did not say he would give it; he said it seemed to be a complicated matter, with numerous papers, and doing any thing, he would like to look at all the papers, and he requested me to bring them up to his house, and he would look at them.

Q. Did you take them up to his house? A. I did.

Q. Did you remain there while he looked at them? A. I did.

Q. Did he make the order at that time, or direct him to attend at another day? A. I went down and consulted with Mr. Ditmars at another day, and we were confident we would get the order.

Q. Did you get the order then, or did he direct you to appear before him on another day? A. I obtained it that night.

Q. At his house? A. Yes, sir.

Q. And that was the order entered on the 30th December? A. That was the order entered the 30th, appointing a Receiver.

Q. Do you remember whether you suggested the name of a Receiver? A. No, sir.

Q. You did, or did not remember? A. I remember that I did not suggest the name.

Q. This order requires the defendants to show cause, on the 8th day of January, why the order appointing a Receiver should not be continued pending the action. Did you attend on the return day of the order, on or about the 8th or 10th of January? A. Yes, sir.

Q. Who appeared with you? A. No one.

Q. Who appeared against the continuance of the Receiver? A. Wm. M. Evarts, Stephen Nash, and J. C. T. Buckley and the attorneys, besides those who appeared for the several defendants.

Q. Were affidavits filed in opposition to the motion? A. Yes, sir.

Q. And was the case then argued? A. Yes, sir; it was argued for several days after that, from time to time.

Q. Before the Justice on that return for an order to show cause? A. Yes, sir.

Q. At what time—the day mentioned in the order to show cause? A. It was the very day I think.

Q. You are sure it was about that day? A. Yes, sir; there

was no postponement, except as the argument continued from day to day.

Q. Then the motion was heard before Judge Cardozo and the case submitted? A. Yes, sir.

Q. Did you enter the order which was made by Judge Cardozo on that hearing? Did you prepare the order? Is that the order? A. No, sir; this is prepared for the attorney for the opposite side, and is in the handwriting of Mr. Hyde.

Q. That is the order which was made deciding that motion which was heard in January? A. No; I will explain to you now after looking at it. This is Mr. Hyde's; I took the order which he had submitted and made some amendments to it.

Q. The question is whether this is the order made? A. Yes, sir.

Q. After that hearing deciding that motion? A. Yes, sir.

(The order referred to is marked "B, Specification 10, Feb. 23d, 1872.")

Q. Before that order of the 30th of December was made, had Judge Cardozo in his hands the draft of the order prepared by you in the case to show cause instead of appointing a Receiver at once? A. No, sir; I think not.

Q. Had such an order been talked over between you before he made this order? A. Yes, sir; we had talked of it at the time I carried the papers up.

Q. And who was it that first suggested the immediate appointment of a Receiver? A. I don't know that it was suggested at all by any one except Mr. Ditmars and myself after that conversation with the Judge.

Q. I mean in your conversation with the Judge who first suggested it? A. I cannot say.

Cross-Examined by Mr. FULLERTON:

Q. When did you first present the papers to Judge Cardozo in that case? A. Either the day before or on the 30th.

Q. Where was that presentation made? A. At the court room in the Court House.

Q. Was Judge Cardozo then holding Chambers? A. No; he was sitting in Special Term at that time.

Q. When you first applied to him? A. Yes, sir; I knew the January term was to be held by him.

Q. Why did he not give you the order there at once? He stated that the papers were numerous, and he was hurried for time and could not attend to the matter then.

Q. What papers did you present to him at that time. A. The complaint and answer.

Q. Of whom? A. The defendants; the trustees; the answers as originally drawn of all the defendants.

Q. Was there anything else presented them; any affidavits? A. Yes, sir.

Q. Of whom? A. I think my affidavit and some accounts, perhaps.

Q. The accounts of whom? A. The trustees.

Q. For whom were they trustees? A. The plaintiff, Elizabeth R. Bowne.

Q. How long had they been such trustees? A. For about sixteen or seventeen years.

Q. Appointed in their early infancy, are they not? A. Yes, sir; when she was about eight years old.

Q. How much real estate? A. The personal property is inventoried by the trustees at $320,000. The real estate, which I caused competent appraisers to value, was about $2,300,000.

Q. They had charge of all that during her infancy? A. Yes, sir.

Q. When did she arrive at her majority? A. 4th of Sept., 1866.

Q. Do you know whether Judge Cardozo was acquainted with this young lady? A. He was not; he was an entire stranger to her.

Q. Where did she live? A. No. 277 Fifth avenue, and at Rye, Westchester Co.; previous to that, while she was an infant, she had resided at Greenwich, Conn.

Q. And at Cuba? A. On her arrival at age she was sick and went to Cuba.

Q. What did Judge Cardozo say on the presentation of these papers to him at the Court room? A. I was going in to make a statement of the matter, and he said it was a complicated matter, and if I would bring the papers up to his house he would look into the matter.

Q. What did you apply to him that day for? A. I am not very certain; I don't think I had any order drawn up.

Q. Didn't you say to him these, or in substance, these words: "I want such an order as you think I am entitled to, either an order appointing a Receiver, or an order to show cause?" A. Yes; I think I said that in substance.

Q. Had you not made up your mind that you were entitled to a Receiver before you went there? A. I had made up my mind she was ruined if one was not appointed.

Q. Didn't you learn that there was a counter action commenced by some of the defendants to get a Receiver appointed of her share of the estate? A. Not only of her share, but it alleged that she was squandering and wasting all her property, and had bought other properties with the proceeds of Gilbert R. Bowne, and unless an injunction was granted against her the defendant, Samuel B. Duryea, would suffer irreparable loss and damage, and he was afraid she would continue to dispose of her property, and prayed an injunction against her disposing of any property she had received from Gilbert R. Bowne or other house in which she lived in Fifth avenue, or any other prop-

erty, real or personal, which she had bought with the proceeds derived from Gilbert R. Bowne.

Q. With this knowledge, did not you go to Judge Cardozo with the intent to get a Receiver appointed for that estate, if you could do it upon the papers you presented? A. All the rights I could get for the plaintiff.

Q. And didn't you intend to get a Receiver if you could? A. Yes, sir.

Q. Didn't you go to Judge Cardozo's house that night or that day? A. I think this was two days before, and I had to draw up the additional affidavits of Mrs. Sterns and the affidavit of Elizabeth Bowne, and I didn't think they were fully drawn at that time, or I went to redraw Miss Bowne's. In any event, I think it was two days after. It *may* have been the same day, but I think it was two days after.

Q. You did go afterwards to Judge Cardozo's house? A. Yes, sir.

Q. How long did you remain there? A. I think about two hours.

Q. What was Judge Cardozo engaged about? A. I was explaining the case to him as appearing in the papers, and he studied the papers very carefully.

Q. How long? A. We went over all the tables. I explained to him the handwriting of H. B. Duryea, and the handwriting of the other parties.

Q. Were these trustees in the possession at that time of any property belonging to the estate? A. Yes, sir.

Q. Was it disclosed by the trustees what had become of this $320,000 personal property? A. The account which I got shows that they had a balance on hand ostensibly from their own account, as late as January, 1867, of about $200,000 of personal property; after that I could not ascertain; when the Receiver was appointed they turned in about $21,000 of bonds and mortgages.

Q. What had they done with a great part of the balance of it, according to their own showing? A. According to their own showing $73,000 was divided—$18,500 to one of the trustees for services in the suit which the plaintiff had bronght against the defendants; $8,500 to Ben Leveridge, a son of the trustee, for services he had rendered; $9,000 to Geo. P. Leveridge, for services he had rendered in a suit; $15,000 to Bradford's executors and representatives for services he had rendered in that suit; $15,00 to Samuel B. Duryea, ($10,000 for services the defendant, Samuel B. Duryea, had rendered in that suit, and $5,000 to his counsel, Hyde, for services he had rendered); and $6,000 to Jacques A. Miner for services he had rendered in that suit; and the balance was not accounted for in any manner I could find.

Q. Who is Geo. P. Leveridge? A. Son of the trustee.

Q. How much had they paid out to bookkeepers? A. During a period of fourteen years, on an average, $18,000 a year to Geo. P. Leveridge.

Q. It was in view of this—that the estate was being squandered in that way—that you wanted a Receiver? A. The accounts of the

trustees and executors, which I had thoroughly examined, showed that his property was being inventoried—his personal property at $222,000, and there was some interest on the bonds and mortgages besides computed, independent of his trust fund of $30,000. It appeared he owed no debts, except a few testamentary debts; but the trustee, Duryea, was allowed a debt of $27,000, and the other trustee, Mr. Leveridge, a debt of $23,000. I found that the income of the estate averaged about $31,000 a year for the fourteen years; and I found a decree entered on record by consent, reciting that all the personal property of Gilbert R. Bowne, and all its interest, and all the income of his real estate had been duly expended in the administration of the estate, and that the estate was indebted to him in ascertained and liquidated debts to the amount of $4,820.49, and of unascertained and unliquidated debts to the amount of $25,000. It was, therefore, ordered and adjudged that the plaintiff, Elizabeth Rodman Bowne, should pay into the hands of the trustees one half of said sum, amounting to $15,200, the half of what I have stated, and Samuel B. Duryea his half of $15,000, same as hers, which sum the trustees were to be paid in bonds and mortgages; and for that purpose they had appropriated the whole accumulations of the trust fund of $30,000.

Q. Has this cause been tried? A. Yes, sir.

Q. How long did it take? A. About six weeks.

Q. Before whom was it tried? A. Judge Sutherland, commencing in May and going into June: about six weeks, more or less.

Q. How many counsel were engaged in the trial? A. The counsel were Judge Fullerton and Mr. Stoughton for the plaintiffs; Mr. Evarts, Mr. Nash, Mr. Buckley, and Mr. Rice for the defendants.

Q. You have omitted Mr. Hayes. A He was acting as attorney.

Q. How long was the case before the Court; the summing up, &c.? A. The case was then adjourned over, to give the counsel an opportunity to prepare, until October, and the latter part of October it was summed up. The summing up, I think, took two and a half to three weeks.

Q. Has the case been decided? A. Yes, sir.

Q. Have you got Judge Sutherland's findings? A. I have not got them with me.

Q. If you could furnish them I should be very happy to read them to the Committee? A. Yes, sir.

Q. Have you formed any conclusion as to what difference this decision of Mr. Sutherland makes in this action? A. I think $600,000 or $700,000.

Q. Was the judgment set aside? A. It was set aside, and declared to have been procured with the intent to defraud, carried on and conducted by the trustees solely at their instigation, and by their procurement, and to be absolutely void for fraud.

Q. Who is John Leveridge? A. He is an old gentleman, about eighty years old—a lawyer of New York.

Q. H. B. Duryea, he was a lawyer of Brooklyn, was he not? A. Yes, sir.

Q. Any way related to Elizabeth R. Bowne by marriage? A. He married twice into the Bowne family; first, he married Samuel's daughter, and when Gilbert R. Bowne died, married his widow.

Q. Have you in your possession a copy of Judge Sutherland's findings? A. I have in the office.

Q. Are they certified? A. Yes, sir; they are now in the desk at Special Term. The trust fund was on for trial before Sutherland, and I had a certified case to use as evidence in that case, and it was there.

Ex-Judge VAN COTT.—The papers on which the final order was made, discharging this receivership in November, were all in the hands of Judge Cardozo on the hearing of the motion in January? A. Yes, sir.

Q. And upon all those papers which you had produced, and which were in his hands when the motion was heard, he did make the order in November discharging the receivership? A. Yes, sir.

Q. The case was afterwards tried before another Judge, and a great amount of oral testimony taken on that trial? A. Yes, sir; the oral testimony is comparatively small to the written testimony.

Q. That was not the question. It was large? A. Yes, sir.

Q. Do you remember whether the complaint in that action asked for an injunction? A. It either asked for an injunction or a Receiver.

Mr. VAN COTT:

Q. You have spoken of the judgment entered? A. Yes, sir.

Q. Does the judgment remove the trustees? A. He finds that their trust ceased when she became twenty-one years old.

Q. Does it remove the trustees? A. No, sir.

Q. Does it direct a receivership? A. No, sir.

Q. Mr. Leveridge is a man of large estate? A. Yes, sir.

Q. Was he when the suit commenced? A. Yes, sir.

Q. Is H. B. Duryea a man of large wealth? A. No, sir. I have understood it was very doubtful whether he was solvent or not.

Q. When did you first learn that? A. I have heard it all along.

Q. Was there a suggestion in any paper on which you got that Receiver that Mr. Leveridge or Duryea, or any other of the defendants, that either of them were irresponsible, or that the estate would be lost through their irresponsibility? A. It was charged that they had failed to pay taxes, and the property was encumbered with it

Q. Was there a suggestion that they were irresponsible? A. None that John Leveridge was, and none of the others that I heard of.

Q. Samuel B. Duryea was a person of large wealth? A. Yes, sir; he is so, a person of very large wealth.

Q. And the widow of Gilbert R. Bowne is also a lady of large wealth A. She got her dower converted into fees. It would take the income of that property for a long time to pay for the taxes and what is due on it, if that is turned back to the estate in dower.

Q. The estate was all there in her? A. It is in her if they can sustain that agreement.

Q. It is to be turned back under this decree? A. Yes, sir.

Q. It is all there? A. No, sir; some of it has been sold.

Q. Small as compared with the bulk? A. Yes sir.

Q. Is this the paper used on the motion? A. This is the paper Judge Cardozo examined at his house. Copies of them were served and read on that motion.

(Affidavits marked "Charge 10 E." are plaintiff's affidavits on motion for Receiver, and "Charge 10 F." opposing affidavits.)

JOHN SPARKS, sworn—Examined by Mr. Parsons:

Q. Are you a Deputy of the Clerk of the Court of General Sessions of the city and county of New York? A. Yes, sir.

Q. Who is the Clerk of that Court? A. Henry Vandervoort.

Q. How long have you held the position of Deputy Clerk? A Twenty-three years.

Q. Have you been subpœnaed to produce certain papers from the office of the Clerk of the Court of General sessions? A. I have.

Q. Were you subpœnaed to produce all affidavits and recognizances or other papers filed in the office of the Clerk of the Court of General Sessions during the year 1869, in the matter of certain proceedings against two women by the names of Mary Pearsall and Joanna Connor? A. I was.

Q. Did you search in your office for any such papers? A. Yes, sir.

Q. Did you find them? A. I found an indictment on file against Pearsall; none against Connor; also the recognizance for Pearsall to answer an indictment that was found.

Q. Were those two the only papers you found in the matter of any proceedings against these women? A. It is all I found.

Q. Were they filed in the year 1869? A. I think it was, sir; I can see better by looking; the indictment was filed on the 20th of September, 1870.

Q. And the recognizance when? A. On the 18th day of February, 1871.

Q. Are those two papers the only papers in the office of the Clerk of the Court of General Sessions in any proceedings against these two women, subsequent to the 1st of January, 1869? A. It is all the papers that were found.

Q. Is not that indictment an indictment fixing the 22d day of March, 1870, as the day charged as that upon which Anna E. Pearsall kept a disorderly house? A. It so appears upon the indictment; it was on the 27th of March, 1870.

Q. And is there any allegation in that indictment that Anna E. Pearsall kept a disorderly house on any day in the year 1869? A. It does not so appear.

Q. Look at the indorsement on the back of the indictment, and

state whether it is not in these words, the handwriting and signature both being that of Judge Cardozo:

"On motion of District Attorney, ordered, that this indictment be, "and the same is hereby quashed. Enter.

A. C., J. S. C."

A. It does so appear, sir.

Q. Have you also been subpœnaed to produce from the office of the Clerk of the Court of General Sessions all recognizances filed during the years 1868, 1869, 1870 and 1871 in the case of prisoners held upon Blackwell's Island at the Penitentiary on final conviction at the Court of Special Sessions and discharged by the Judge of the Supreme Court upon *habeas corpus?* A. Yes, sir.

Q. And have you produced those recognizances? A. I have, sir.

(The witness here produced the recognizances).

Q. I wish you to separate from the bundle all such recognizances filed during the year 1871.

(Witness did so, and Mr. Parsons called off the names of the prisoners discharged by Judge Cardozo in 1871, with the particulars from the writs and discharges.)

Q. "Valentine Weissensee, discharged January 30, 1871; committed January 5, 1871; crime, petit larceny; sentence, three months-Attorneys, Howe & Hummel. Convicted on confession of the pris, oner. Judges Dowling and Shandley." Any recognizance? A. No. sir.

Q. It should be stated that the discharges in all cases are by Judge Cardozo.

"No. 7. Joseph A. Lowrey, discharged February 1, 1871. No commitment returned. Attorney, M. J. A. McCaffrey. It is indorsed, 'Received this writ with the above indorsement, February 1, 1871, at 3:45 P. M. The body not having been produced at court, the prisoner was discharged as ordered.'"

Mr. Fullerton: I read also from the remarks, "The above named "prisoner is not within this institution.

"J. KEAN, per
"W. B. THOMPSON, *Clerk.*"

Q. Is there any recognizance there? A. No, sir.

Q. "No. 10. William Horan. Discharged Feb. 8, 1871. Com- "mitted December 6, 1870. Crime, assault. Sentence, six months. "Attorneys, Howe & Hummel. Justice, Dowling. Conviction on "confession." Any recognizance? A. No, sir.

Q. "John Frederick and Conrad Mehling. Discharged Feb. 8, 1871. "Committed, Jan. 5, 1871. Offence, petit larceny. Sentence, three "months. Attorneys, Howe & Hummel." Justice, Shandley. Any recognizance? A. No, sir.

Mr. Parsons. In the case of John Frederick the sentence is four months and in the case of Conrad Mehling it is three months.

Q. "No. 15. A. Keeba Phillips. Discharged on his own recogni-

"zance. March 20, 1871. Committed Feb. 21, 1871. Crime, petit "larceny. Sentence, six months. Attorneys, Howe & Hummel. Jus- "tices, Dowling and Shandley." A. No recognizance.

Q. No. 14. Allen Marshall discharged on his own recognizance, March 20, 1871. Committed, March 7, 1871. Crime, petit lareeny. Sentence, six months. Attorneys, Howe & Hummel. Justice, Dowling. A. No recognizance.

Mr. PARSONS. In the cases of Marshall and Philips the order is "Prisoner discharged on his own recognizance. A. C., J. S. C." In case in the handwriting of Judge Cardozo.

No. 16. Moses Henry, discharged March 20, 1871. Committed, Feb. 2, 1871. Crime, assault and battery. Sentence, three months. Attorneys, Howe & Hummel. Justice, Dowling. A. No recognizance.

Q. No. 17. Charles M. Bird. Discharged, March 27, 1871. Committed, Oct. 25, 1870; crime, assault and battery; sentence, four months; attorneys, Howe & Hummel; Justice, Dowling? A. No recognizance filed.

Q. No. 18. Herman Ledendorf; discharged March 27, 1871; committed, March 14, 1871; crime, assault and battery; sentence, four months; attorneys, Howe & Hummel; Justices, Dowling and Shandley. A. No recognizance.

No. 25. William Roche; order discharging him on his own recognizance, April 20, 1871; commitment, April 17, 1871; crime, petit larceny; sentence, six months; attorneys, Howe & Hummel; Justices, Dowling and Shandley. A. No recognizance.

Put in by Judge FULLERTON.

No. 25. Nelly White; order prisoner bailed; District Attorney having approved bond, April 18, 1871, A. C., J. S. C. The words "prisoner bailed, April 8, 1871, A. C., J. S. C.," being in the handwriting of Judge Cardozo, and the words "District Attorney having approved bond," in the handwriting of Mr. Sullivan, Assistant District Attorney. Committed, March 25, 1871; crime, petit larceny; sentence, six months; attorneys, Howe & Hummel; Justices, Dowling and Shandley.

By Mr. PARSONS:

George M. Fisher; order in Judge Cardozo's own handwriting, "Let the prisoner be discharged on his own recognizance," April 10, or 15, 1871; crime, petit larceny; sentence, six months; attorneys, Howe & Hummel. A. No recognizance.

Q. Henry Evart. The order in Judge Cardozo's own hand-writing, "Discharged on his own recognizance, May 24th, 1871. Albert Cardozo, J. S. C." Committed May 2d, 1871. Crime, petit larceny. Sentence, four months and a fine of $100. Attorneys, Howe & Hummel. Dowling, Justice. A. No recognizance.

No. 22.

Q. The next is Stephen H. Rowan, discharged June 23, 1871; com-

mitted April 1, 1871; crime, personating an officer; sentence, six months and a fine of $50. Attorneys, Howe & Hummel. Justices, Dowling and Shandley. A. No recognizance.

No. 46.

Q. The next is John C. McGuinnes. Discharged June 7, 1871; committed April 22, 1871; crime, assault and battery; sentence, six months. Attorneys, Howe & Hummel. Justice, Dowling. A. No recognizance.

Q. Robert Smith.—(The counsel for Judge Cardozo puts in that case.)

William A. Shinnick—Order. "Writ dismissed and prisoner bailed June 9, 1871. Commitment May 23, 1871. Crime, keeping a disorderly house. Sentence, two months. Attorney, Howe. Justice, Dowling. A. Yes, sir; I found a recognizance in the name of William A. Shinnick.

By Judge Fullerton:

Q. In the Shinnick case in whose handwriting are the words R. H. Jerome? A. I should suppose in Mr. Jerome's handwriting.

Q. Who is Mr. Jesome? A. He was one of the Clerks of the District Attorney, but has since deceased.

By Mr. Parsons:

The recognizance is filed June 9, 1871, in $500, signed by Shinnick as principal, with Andrew Heffeny as surety, and witnessed by Judge Cardozo.

By Judge Fullerton:

Daniel Fox.—Order signed by Judge Cardozo: "Writ dismissed and prisoner bailed by order of Justice of the Superior Court, A. C., J. S. C. Statement: Daniel Fox committed May 25, 1871; crime, personating a policeman; sentence, twelve months. Attorneys, Howe & Hummel. Justices, Dowling and Shandley. Judge's order by Judge Monell, of the Superior Court. A. There was a recognizance. Daniel Fox bailed before a Justice of the Superior Court, Judge Monell.

By Mr. Parsons:

Q. Edward Haslan.—Discharged June 29, 1871; committed March 18, 1871; crime, petit larceny; sentence, six months and a fine of $50. Attorney's, Price & Sweat. Justices, Dowling and Shandley. A. No recognizance.

Q. Patrick McGowan.—Discharged Sept. 7, 1871; committed Aug. 9, 1871; crime, assault and battery; sentence, three months. Attorneys, Howe & Hummel. Justices, Dowling and Shandley. A. No recognizance filed.

Q. Adelaide Beaumont—"discharged October 3, 1871;" committed August 13, 1871; offence, keeping a disorderly house; sentence, six months and a fine of $200. Attorneys, Howe & Hummel. Justice, Dowling? A. No recognizance filed.

No. 76.

Q. Silas Gordon—discharged October 12, 1871; committed May 30, 1871; offence, petty larceny; sentence, six months. Attorneys, Howe & Hummel. Justices, Dowling and Shandley. A. No recognizance filed.

No. 79.

Q. Wm. Johnson.—Order in Judge Cardozo's handwriting; "prisoner discharged on his own recognizance, Oct. 1, 1871. A. C., J. S. C." Committed September 4, 1871; crime, Attorney's, Price & Sweat. Justice, Shandley. Convicted on confession. A. No recognizance filed.

No. 78.

Q. James Rooney.—The order in Judge Cardozo's handwriting, "Prisoner discharged on his own recognizance, Sept. 30, 1870;" committed Sept. 18; crime, petit larceny; sentence, six months. Attorneys, Price & Sweat. Justice, Dowling. A. No recognizance filed.

No. 80.

Q. Next is William ———, the order in Judge Cardozo's handwriting. "Prisoner discharged on his own recognizance, October 3, 1871. A. C., J. S. C." Committed, September 28, 1871. Crime, petit larceny. Sentence, six months. Attorney, Sweat. Justice, Dowling. A. No recognizance filed.

No. 77.

Q. John McGee, the order in Judge Cardozo's own handwriting. "Prisoner discharged on his own recognizance, October 31, 1871, A. C., J. S. C." Committed, August 12, 1871. Crime, petit larceny. Sentence, four months. Attorneys, Price & Sweat. Justice, Shandley. Conviction on confession.

Nos. 82 and 83.

John McGuinness and Thomas McGuinness. Order in Judge Cardozo's own handwriting. "Prisoners discharged on their own recognizances, November 1, 1871." Committed, April 29, 1871. Offence, assault and battery. Sentence, twelve months, and fine of $200. Attorneys, Howe & Hummel. Justices, Dowling and Shandley. A. No recognizance filed.

No. 72.

Q. Albert Myers, discharged September 7, 1871; committed, August 7, 1871; crime, keeping a disorderly house; sentence, twelve months, and fine of $100. Attorneys, Howe & Hummel. Justices, Dowling and Shandley. A. No recognizance filed.

No. 84.

Q. John H. Bridgewater, discharged November 6, 1871; committed, May 25, 1871; offence, carrying a dangerous weapon; sentence, nine months. Attorneys, Howe & Hummel. Justice, Dowling. A. No recognizance.

Mr. Stickney. This completes the cases we offer for the year 1871.

Counsel for Judge Cardozo offers cases following:

Q. Joseph Silverstein, bailed on consent of the District Attorney,

August 4, 1871; committed, May 11, 1871. Crime, petit larceny; sentence, six months. Attorneys, Howe and Hummel. Justice, Dowling. A. Recognizance filed by the prisoner, with Herman Kertowsky as surety in $500; witnessed by Judge Cardozo.

Q. Michael Meehan, bailed by consent of the District Attorney, July, 1871; committed, July 11, 1871. Offence, carrying a dangerous weapon; sentence, six months and fine of $100. Attorneys, Howe & Hummel. Justice, Shandley. A. Recognizance filed in that case signed by the prisoner, with Thomas Mescombe as surety in $500; witnessed by Judge Cardozo.

Q. George Warner, writ discharged and prisoner bailed July 10, 1871; committed, June 24, 1871; crime, petit larceny; sentence, six months, and fine of $50. Attorney, Howe. Justice, Shandley. A. Bond in that case signed by the prisoner, with Joseph Myer as surety; witnessed by Judge Cardozo.

Mr. PARSONS:

Q. Do you know Price & Sweat, the attorneys, whose names appear upon some of these papers. A. Yes, sir; they are lawyers, practicing in the Court of Sessions.

Q. What connection is there between them and the firm of Howe & Hummel? A. None that I am aware of.

Q. Does not some member of the firm of Howe & Hummel act as counsel for the firm of Price & Sweat or *vice versa?* A. I am not aware.

By Judge FULLERTON:

Q. Howe & Hummel do a large business? A. Yes, sir.

Q. Very large? A Yes, sir.

Q. Largest of any firm in the city? A. I believe so.

By Mr. PARSONS:

Q. Are there any other papers in the office of the Clerk of the Court of General Sessions, in reference to any of these cases than the recognizances which you have produced? A. In some cases returns from the clerk's office of Special Sessions—I have brought them this morning.

Q. Are they returns to writs of *certiorari?* A. Yes.

Q. Are there any other papers in the office of the clerk of General Sessions in any case about which you have testified? A. No, sir; no others.

Q. And the *certiorari* returns are in the cases of George Warner, Edward Haslain, and Stephen H. Rowan? A. Those are all.

By Judge FULLERTON:

Q. Mr. Sparks, you have spoken of R. H. Jerome, who was a clerk in the District Attorney's office? A. He was.

Q. For how long? A. Some years.

Q. Who had the principal charge of these writs of *habeas corpus*? A. He had.

Q. During all that time the practice was what it is now A. Yes.

Q. He appeared in court on the return of the writs? A. Yes.

Q. Do you know what the practice of Judge Cardozo was when he took a recognizance? A. It was always sent by Mr. Jerome, generally.

Q. It would be handed to Mr. Jerome by the Judge? A. I was going to say that he almost invariably filed it in our office when he did file it.

Q. He filed it in your office when he did file it? A. Yes, sir.

Q. The Judge did not file the recognizance? A. Never, sir.

Q. Usually did he send a special messenger to do it, or was that the practice? A. No, sir.

Q. What is the practice when the Judge orders bail to be given? A. Merely acknowledges that the bond is acknowledged before him, and he hands it right over to the party representing the District Attorney's office.

Q. Is not the bond ever acknowledged before some other Judge? A. Frequently.

Q. In case the Judge is holding court of Oyer and Terminer, what is the practice? A. Then bonds are acknowledged in open court.

Q. They simply step up to the clerk's desk and make the acknowledgment before him? A. Yes, sir; and acknowledge them in open court.

Q. In such a case the Judge does not pay any particular attention to it? A. No, sir.

Q. It is in open court? A. Yes, sir.

Q. There is a good deal of criminal business done in this city? A. A good deal, sir.

Q. And it is done with great rapidity, is it not? A. It is, sir.

Q. I want to ask you about the office of the Clerk of Court of Sessions. Is there room there to transact business with convenience? A. Yes, sir.

Q. Is it not somewhat crowded? A. There is sufficient room to transact the business.

Q. Is there sufficient room and convenience for keeping papers? A. Yes, sir.

Q. These writs of *habeas corpus* generally come from Chambers, do they not? A. Yes, sir.

Q. Generally sent through the District Attorney's office? A. Yes, sir.

Q. Have you looked for any recognizance executed by Mrs. McGrau, or any indictment found against her? A. No, sir.

Q. Do you know whether she was indicted for criminal contempt? A. I don't know from recollection; I could ascertain by examining the minutes.

Q. Did you look to see whether there were any recognizances given by Pearsall and Connor, when discharged on *habeas corpus*? A. I have; there was only one for Pearsall, on commitment for keeping a disorderly house.

By Mr. PARSONS:

Q. In a case where the discharge does not state that there was a recognizance did you ever receive a bond where the prisoner had been discharged by Judge Cardozo? A. Not to my knowledge.

Q. Did you ever know a case where a prisoner was discharged on a writ of *habeas corpus* by any other Judge without sureties? A. I don't recollect such a case.

Q. In any instance where a prisoner has been discharged on his own recognizance without sureties? A. No, sir.

Q. No recognizance is taken; is a bond taken? A. No recognizance is taken.

By Mr. FULLERTON:

Q. The writ of *habeas corpus* is generally in the hands of the District Attorney? A. It is generally; they keep them. He brings the prisoner before the Judge, and it is handed to him.

Q. The Judge knows nothing about it? A. Knows nothing about it until it is brought back to him.

By Mr. PARSONS:

Q. Have you ever known such a case as you have described upon the examination of Judge Fullerton of a prisoner being discharged on his own recognizance; where the prisoner was held on a final conviction at the Court of Special Sessions? A. No.

Q. You have never known of it anywhere? A. I never knew that anywhere.

By Mr. FULLERTON:

Q. Have you any knowledge of the decision in the Devine case? A. I recollect hearing of it.

Q. Do you recollect what the decision was? A. Not at this moment; that is the case referred to.

A. S. SULLIVAN, sworn—Examined by Mr. Parsons:

Q. Are you, and have you been, for some length of time Assistant District Attorney of the City and County of New York? A. Since the month of November, 1870.

Q. Down to the present time? A. Yes, sir.

Q. Does the District Attorney keep in his office a book of discharges of prisoners upon *habeas corpus*, where such discharges are granted by Justices of the Supreme Court, the prisoner being sent, upon final conviction, to Blackwell's Island? A. There is a book kept in our office, and which I believe is here, or has been here. It is called the book of registry for writs, and should contain regularly an entry of notices that a writ of *habeas corpus* has been granted, and also of *certiorari*, and it is intended that there shall be an entry upon it; what disposition was made. I believe the book is here.

Q. Look at the book now produced and state whether that is the book? A. Yes, sir; this is the book.

Q. Look at the entry in the case of Charles Barry and the entry under the head of Remarks, Alderman Coman, and state whether you remember that writ? A. Have not the slightest idea.

Q. Who is Alderman Coman? A. I know there is such a gentleman in this city ever since I have resided in the city. I believe he has been a member of the Common Council of the Fourth Ward, and

I inferred when I saw the name of Alderman Coman that he was the person. I have no other knowledge of it except such as a resident of New York would have. That is in the handwriting of a young gentleman who has recently died, Mr. Jerome. His position in our office was that of Clerk, and his business was to keep that book.

Q. Look at the entry in that book under the same head of Remarks, in the case of James Sweeny, and state whether you know who is the person that is there mentioned, and what is the meaning of that entry? A. To the first part of your question, I know Mr. James M. Sweeny; I think I know his name; he was recently in the Superior Court of this city, and he now resides here. To the latter part I can answer that I have no knowledge.

Q. Is it in the handwriting of Mr. Jerome? A. Yes, sir.

Q. Is it the Mr. James M. Sweeny who has been absent from the city of New York? A. The one I speak of is the one who has been absent from the city.

Q. Look at the entry in that book in the matter of Edward Haskins, and the minute under the head of Remarks, "Alderman Coman," and state whether that is the same person, and can you state anything further as to what is the meaning of the entry? A. I infer that it refers to the same gentleman I spoke of before, who, I believe, is now in the city, but what the entry means I have no knowledge, either personally or from any information; I never saw either of these entries until I see them now.

Q. Is the entry in the handwriting of Mr. Jerome? A. Yes, sir.

Q. Look at the entry in that book in the matter of John McGuinness, and the minute under the printed head of Remarks, "James Sweeny," and state whether the entry is in the handwriting of Mr. Jerome, and whether the person is the same person whom you have spoken of, James M. Sweeny, and whether you know the meaning of the entry? A. My answer would be identical with what I have previously said; I know James M. Sweeny; I knew at the time that it was the same, but, of course, I could not swear positively; I know nothing personally of this entry or what it signifies.

Q. Is it not frequently the case that persons having political influence apply to the District Attorney in aid of the release of prisoners? A. I would have to answer that question, as it is a broad one, partly in a double way, by which I mean, first, when applications are made to Judge Garvin, who is District Attorney; I don't remember ever to have heard of such an application made to him; by virtue of my office of Assistant District Attorney, I am really vested with all the powers as if District Attorney myself, as far as New York is concerned, and as I have had almost a general participation in everything that has taken place during my term, I can answer as to myself; a few persons have called upon me where writs of *habeas corpus* were issued, and have made representations in favor of the persons, sometimes asking that the District Attorney should consent to a discharge, but I can say that no application of that kind has ever been made to me to consent to a discharge on account of political favor.

Q. Do not the names to which your attention has been called under the head of "Remarks," in that book, apply to the persons who have thus interceded for in such cases? A. I cannot frankly say; that would be an inference of mine; I have no knowledge; if I were asked about any entry of that kind I would understand it to be that I had taken the responsibility in view of the case, and did what I thought was right to the city, if I thought it was a case where no legal objection could be interposed, and it was a right thing to have him discharged.

Q. Would you infer from that entry (referring to another case) that the discharge was made at the request of William M. Tweed, Jr.? A. That is something that you could infer, and I think probably it might be so. That is an inference, but certainly I would suppose that ex-Sheriff O'Brien had spoken about the case, and the other remark explains itself.

Q. Would you infer that this favor was charged to Mr. O'Brien? A. It might not be a favor; it might have been a right. It would not like to commit myself to it as a favor, but it might very well be. This is a case of *habeas corpus* where a person was charged with an offence. It might be a case in which there is an element of merit in the application from the fact that ex-Sheriff O'Brien came to the office. Citizens would come with their counsel or friends; they would come for the purpose of asking a favor.

Q. Have you any law which requires entries to be made? A. No, sir.

Q. In a book of this description? A. No, sir.

Q. It is got up for the convenience of the office solely? A. Yes, sir.

Q. Not upon the basis of any law? A. Not that I know. I do not believe that there is any requisition that we should keep this entry. In almost every instance some person comes to the office about a person who is arrested to see where it is to be tried, and can a man be bailed, and sometimes the lawyer calls, accompanied by the relatives of the accused. In the case of John Homan, assault and battery, *habeas corpus* was allowed by Judge Cardozo. In one column to the left is "Offence—felonious assault and battery, two cases, writ of *habeas corpus* allowed by Justice Cardozo, returnable July 21. Adjourned." Oftentimes there are a dozen adjournments. Discharged occurs, and I infer that the prisoner was discharged. Discharged is printed, but there is no manuscript. Decision reserved, bail reduced to $1,000 in each case by Justice Cardozo.

By Mr. STICKNEY:

Q. Will you state whether that appears to be a case after conviction? A. No, sir; and I think from this entry I would be warranted in saying it was not a case where an application was made to bail; it was left to the Judge to see whether he could properly reduce the bail.

Q. It was not after final conviction? A. If this entry was made as it should be, that is the fact.

By Mr. HAYES:

Q. Did you order the remarks in that case? A. That would be within my memory, and I could give you the exact statement of it. There never was a decision from any personal application.

Mr. PARSONS. I desire to put in evidence the writ, return copy, commitment and discharge in three cases in the year 1870. Daniel Sullivan discharged in these words: "Prisoner discharged on his own recognizance. A. C." Committed September 27, 1870. Crime, assault and battery. Attorneys, Howe & Hummel. Sentence, four months. Justice Dowling, there being indorsed on the writ: "I oppose this application for the prisoner's discharge; and I do not, and will not, consent to the discharge. S. B. Garvin, District Attorney." Is that in the handwriting of Judge Garvin, who is District Attorney? A. Yes, sir.

Q. The case of Marks Mamlock, discharge in these words in Judge Cardozo's handwriting: "Discharged on his own recognizance, November 21, 1870. A. C. J. S. C. Commitment October 27, 1870. Crime, petit larceny. Sentence, six months, and $50. Attorneys, Howe & Hummel," there being indorsed on the writ: "Adjourned to 21st November, 1870, at 11 A. M., and in the meantime the prisoner is remanded. I oppose the prisoner's discharge at any time. S. B. Garvin." Is that in Judge Garvin's handwriting, the District Attorney? A. Yes, sir.

Q. In the case of Richard Cuff, the order in Judge Cardozo's handwriting, "Prisoner discharged, having given bail to appear in $100. Committed, November 22, 1870; crime, assault and battery on Mary Curtin; attorneys, Howe & Hummel; sentence, two months; Justice, Dowling," with this indorsement on the writ, "I oppose the discharge; the prisoner is a bad fellow. S. B. Garvin, District Attorney." Is that Judge Garvin's handwriting? A. Yes, sir.

By Mr. STICKNEY:

Q. Have you any knowledge of any prisoners being discharged on a writ of *habeas corpus* after final conviction at Special Sessions during the last year, by any other Justice than Justice Cardozo? A. Yes, sir.

Q. By a Justice of the Supreme Court? A. I now recall one where the *habeas corpus* was accompanied by a *certiorari*.

Q. What was that? A. That was by Judge Barnard.

Q. Was there one by Mr. Justice Cardozo? A. Do you refer to cases of this kind where a *certiorari* had been issued to the Special Sessions and the application was to bail?

Q. Where a prisoner had been discharged after final conviction in the manner that these have been discharged. Do you know whether it has been done during the last year by any other Justices than Justice Cardozo and Justice Barnard? A. I have no recollection, personally, of any case; and I must say, as your question mentions Judge

Cardozo, I have no personal recollection of a case by Judge Cardozo. It is the production of the case alone, that brings to my mind the case.

Q. You would remember, would you not, if such things had been often done? A. I would recollect that it had been done.

Q. You say that you would probably recollect? A. Yes, sir.

Q. Would you not probably recollect whether you have done it or not? A. Yes, sir.

Q. And you would know that Justice Cardozo had done it in a number of cases? A. Not to my personal knowledge.

Q. But you know from what was said in the District Attorney's office? A. I have heard it stated; yes, sir.

Q. Have you heard of any case of that kind except when Howe & Hummel were the attorneys for the prisoner? A. I do not think I ever heard any allusion to the names of the counsel. I have no recollection that the matter was mentioned in connection with it. Lest I should be misunderstood, there has been within the last week or two a rumor of the matter now pending here, and something as to their general nature, and what they related to, and that much has become a matter of conversation, that some of these things that you are investigating related to alleged action by Justice Cardozo, and the application made by those lawyers. My understanding as to their names, relates to this period I speak of.

Q. Do you know of any prisoners released by Judge Cardozo, or any one else after final conviction, except when the writ of *certiorari* accompanied the writ of *habeas corpus*? A. I have no recollection now of any such case.

By Mr. STICKNEY:

Q. The statute requires in that case that there should be sureties? A. Yes, sir.

Q. If there is a *certiorari* issued the statute requires that there should be always sureties? A. To take the proceedings up to the Supreme Court. The Judge only has knowledge of that when the bail bond is submitted to him. If a Judge thinks that a party shhoul be admitted to bail, he indorses the bail bond. It is the practice, and I believe, by law, the duty of the District Attorney to fill up the bond, and that being filled up and signed by the parties, the paper, with the principal and the surety, is then presented to the Judge, and he, looking at it, and ordinarily asking the District Attorney, "Have you examined this bond, and is it correct in form?" he takes the bond then, and he never sees it except for that purpose. It is open for him to examine, but he does not feel that he has time or that it is necessary. It is handed to the Clerk by the court.

Q. They go back to the District Attorney? A. The theory is that the Clerk receives it, although, if I act as District Attorney, the bond is handed to me, and I carry it to the Clerk, where it is by law to be filed.

Q. Those recognizances are never preserved in the District Attorney's office? A. Never a minute longer than just the time for the

convenience of the Clerk; it is carried right into the Clerk that it may be on file. There is one for the Oyer and Terminer and General Sessions. The representative was here this morning, Mr. Sparks, and he keeps in his office all recognizances of that kind. We do not touch them except for the purpose of transferring them from the Court room.

By Mr. FULLERTON:

Q. Will you describe the ceremony where the return of the writ is returnable, and the prisoner is discharged? A. Ordinarily a notice, which is printed, is handed to the District Attorney, telling him the place where the writ is returnable, and the time. The officer brings the prisoner, the person referred to in the writ, into the District Attorney's office, and says to me, "I have this prisoner and this writ;" he shows both. "Can you go over with me to the Judge?" If it is made before a Judge at Chambers, or at Special Term, and if I am not engaged particularly, I go at once, and we present ourselves at the Bar. Having the privilege of being heard as the representative of the people, I usually at once pass up the writ from the officer to the Judge, and he asks what there is to be said about it. If there is an attorney representing the accused, he makes his statement as to the case, and if I have anything to reply, a general objection, I am heard and the Judge acts upon it. If there is a *certiorari*, setting forth the evidence, probably both of us comment upon it. The Judge, if he wants to look into the matter, does so, and if it is very voluminous he sometimes takes the papers home, and he adjourns the hearing till the following morning, and then he acts upon it and takes the writ, and if he concludes to discharge he writes "Prisoner discharged," and writes his initials, so that the officer cannot take the writ back to the prison. If he wants to fix bail he writes, "Prisoner admitted to bail," and fixes the amount. Generally he returns it to the District Attorney, who hands it to the officer, who must take it back to the place from where he took the prisoner.

Q. What has the Judge to do with the giving of bail—what is the practice? A. After he makes the entry the prisoner is still in custody, and probably goes back, in nine cases out of ten, to prison, and then the parties who offer themselves for bail present themselves later in the day, or on the following day and say, "We have come to offer bail, in the case of the prisoner referred to," and thereupon, I take my blank form, and fill up the words and the amount designated by the Judge, and I make the surety, take an oath, and answer any question with regard to his qualification, his property, and put that in the proper part of the bond, and that being all completed as to sufficiency in every respect, it is then taken over to the Judge, who is sitting in General Sessions, if not, it is taken to the Judge at Supreme Court Chambers; sometimes the case may be an urgent one, and none of the Judges are down, for instance, on Saturday, and we consent that some other Justice or some other Court might take the recognizance.

Q. Is it necessary to take a prisoner before the Judge before he is discharged? A. No; by law, the Judges of the Court of General Ses-

sions, the City Judge, and the Recorder, can take the bail in any case and any Judge of the Supreme Court, and any of the Judges of the other Courts can, and I think I am right in that; as a matter of courtesy, other Judges decline to interpose, unless there is some express consent.

Q. If the prisoner is discharged on bail you pay no further attention? A. That means that I consent they may give bail.

Q. In what cases are prisoners discharged when they are brought up on habeas corpus, after a final conviction at Special Sessions? A. I have no power to answer that question; I have always felt, that as a matter of law, a Judge had no legal authority to make a discharge at all, and that the proper course of proceedings was by a writ of *certiorari*, to take the proceedings upon which the conviction was had, regularly, to the Supreme Court.

Q. Has it not been the practice for a Judge of the Supreme Court to discharge a prisoner after final conviction, if, by the production of the record, it appears that there was no jurisdiction? A. I think that a Judge could do it; I would not say it was wrong in him; I cannot remember where such a thing occurred under my observation.

Q. State whether there is a case now pending in the Court of Appeals, involving the right of a certain Justice? A. There is.

Q. Even where it is stated in the record that another Justice is absent from disability? A. The case, as I understand it, would involve the question, whether one Judge can hold, even if the record show the nature of the disability, and then, also the other question, whether it is sufficient, if one Judge can hold where the other Judge was disabled, whether it is sufficient to sustain the record, if the absence shall be simply recited in the record, or not, or whether there must be a judicial finding, or a statement as to what the disability was; it involves both; I know what the questions were, because they were argued at General Term, and because the counsel for the appellants in the case has distinctly notified me that he will present and urge both of those points next Thursday.

Q. Who generally attended to the *habeas corpus* cases? A. Since I have been in the office, it has been generally myself when I was not engaged in the trial of cases in the Court of Special Sessions.

Q. Did Mr. Jerome attend to it? A. I had the largest burden of trying cases in the Court of Sessions. In the latter part of the year 1871, Mr. Jerome did attend the Court in person at our request.

Q. This book, which is produced from the District Attorney's office, do you know whether Judge Cardozo ever saw it? A. It is kept carefully by a clerk, and it is meant for the use of the District Attorney, and nobody else. So far as I know, Judge Cardozo has never been in the District Attorney's office; he may have been.

By Mr. STICKNEY:

Q. Look at those commitments in the cases of William Johnson and Patrick McGowan; are they the ordinary written forms of the convictions by the Court of Special Sessions? A. They are, and what I see every day.

Q. Do you remember this case, which is now before the Court of Appeals? the commitment was in the same form as one of those? A. Without any doubt in my mind, that is an exact copy of the blank, and the difference would be simply the name and description of the offense.

Q. That cause was argued first at the General Term of the Supreme Court? A. Within a month.

Q. And Mr. Justice Cardozo delivered the opinion of the Court? A. Yes, sir.

Q. Holding that that conviction was perfectly regular? A. Yes, sir.

Q. He said that that was the first case that came before him under the Statute of 1870? A. Yes, sir.

Q. All of these have been convictions under the Statute of 1870? A. Yes, sir.

Q. And the case at the General Term was decided before the investigation here? A. About a month ago.

Q. And the appeal was taken when? A. Within a very few days.

Q. Give us the date as near as you can? A. My recollection is, that it was about two weeks ago.

Q. As long ago as that? A. It didn't come to my knowledge as long ago as two weeks.

Q. When did it come to your knowledge? A. The latter part of last week; the Counsel asked me to go and argue it, inasmuch as Judge Garvin would be engaged in another case.

Q. In Devine's case, which you read, there was a traverse, was there not? A. Judge Sutherland held that would be a question of law; I suppose that the Judges might take different views about that, according to their extreme ideas as to the duty of a Judge on writs of *habeas corpus*.

Q. Do you know of any case where it has been decided that there is jurisdiction to discharge if there is no traverse? A. None has occurred in my observation.

Q. Will you please refer to the revised Statutes, part 4, chapter 2, article 4, 2d volume, p. 742; will you read that? if the Justice of the Supreme Court allows a writ of *certiorari*, there is no jurisdiction for him to discharge unless he takes bail and sureties? A. If I understand your question as relating to what has been already observed upon in the Devine case, the Judge assumed the law to be that he had to go into the question.

Hon. THOMAS W. CLERKE, sworn. Examined by Mr. PARSONS:

Q. How long, and down to what date were you a Justice of the Supreme Court of this District? A. In November, 1853, I was elected for the first time. My term of office commenced on the 1st of January, 1854, and ended 31st December, 1861. I was re-elected in the fall of 1861 for another term, which terminated on the 31st of December, 1869—sixteen years.

Q. Were you aware, during any portion of your term, and particularly during the year 1868, of any practice by any justices of the Supreme Court of this District to release on *habeas corpus* prisoners held under commitment to the Penitentiary on Blackwell's Island after a final conviction at the Special Sessions? A. I might have heard, but I do not think I know anything. I was in the Court of Appeals in 1868.

Q. Did you return to the Supreme Court after leaving the Court of Appeals? A. After the first of January, 1869.

Q. How long did you remain in the Supreme Court? A. One year.

Q. Did you learn of any such practice during 1869? A. I don't recollect.

Q. Did you ever release a prisoner on any such application? A. I do not recollect that I ever did; I examined the matter, and found I hadn't authority.

Q. Do you remember whether among the judges of this District, that question was discussed, and with what result? A. I have some recollection of being informed by Judge Sutherland.

Q. State what Judge Sutherland informed you? A. He said he had come to the conclusion that the Supreme Court had no power to release a prisonor after conviction, and I came to the conclusion myself some years before.

Q. Are you also aware, sir, of the practice and right to release on bail, where the prisoner was produced in Court on *habeas corpus*, after final conviction, where a *certiorari* had been regularly taken, and also in the case where there is a traverse to the return raising the question of the jurisdiction of the Court of Special sessions? A. I know nothing of that at all; I don't remember the practice at all.

Q. Is it the fact that you have never discharged after final conviction at all. A. I think not.

Q. On the occasion when Justice Sutherland told you that he had examined the subject, and told you the conclusion he had come to, do you remember whether other judges of the Supreme Court were present? A. I cannot recollect; I heard Judge Sutherland speak of this case to-day, but I imagined it was a different case he spoke about at the time he made the decision.

By Mr. FULLERTON (referring to Devine's case):

Q. Do you recollect hearing of that decision? A. No I do not; my impression was that Judge Sutherland said that he had come to the conclusion that no Judge of the Supreme Court had power to discharge a prisoner after conviction.

By Mr. NILES:

Q. Do you recollect the date? A. I don't recollect the date.

By Mr. FULLERTON:

Q. Do you recollect telling Judge Cardozo that such was Judge Sutherland's opinion? A. Oh! no, I don't recollect that I had any conversation with Judge Cardozo on the subject.

Q. Do you recollect ever having suggested to Judge Cardozo that you had any doubt about the right of a Judge to discharge after final conviction? A. I do not. I have always understood that a Judge had no power of that kind after final conviction.

Hon. JOSIAH SUTHERLAND sworn. Examined by Mr. Parsons:

Q. How long, and down to what date, were you a Justice of the Supreme Court of this District? A. I was elected in the fall of 1857 for six years, and re-elected for the full term at the expiration of six years—for the full term ending the 1st of December last, 1871, so I was Judge ten years.

Q. Did you ever learn or hear of a practice on the part of any Judges in this district of releasing upon *habeas corpus* prisoners held upon final conviction by the Court of Special Sessions at the penitentiary on Blackwell's Island? A. Yes, sir.

Q. Did you know of that practice on the part of Judges Cardozo and Barnard, as continuing through 1868, down to 1872? A. I cannot say that I know of a practice on their part; I cannot say from memory or from my knowledge.

Q. Did you learn of it by what you were told? A. I cannot say that I was told about that particular practice; I can hardly recollect. You say since 1868?

Q. 1868, 1869, 1870 and 1871? A. I have no recollection, during those years, of the practice of either of those Judges.

Q. Do you know of any such practice on their part prior to 1868? A. I don't recollect now what the law was. In 1866, I think, there was a practice, as far as my recollection serves me, occasionally to discharge prisoners on *habeas corpus* who had been convicted and sent to Blackwell's Island—finally convicted at Special Sessions—allowing a *certiorari*, and taking a recognizance to appear at the General Term. So far as my recollection or experience of the practice is concerned, there were printed forms in the District Attorney's office of recognizances, and also of *certiorari*, and the writs of *certiorari* were made returnable at the General Term. The recognizance was returnable there, and, as far as I recollect, the attorneys seeking the discharge of the prisoner would present to me, as far as I recollect in my own experience—and I presume that was the case with others—the attorneys would bring to me at Chambers the *certiorari*, and the recognizance, with the District Attorney's consent in writing, or his assistant in writing, to the discharge of the prisoner on taking his recognizance. I cannot think of anybody applying to me now except Mr. Howe, or some one from his office. There may be other cases, but, so far as I am concerned, I have always reluctantly granted the discharge, generally saying I didn't understand where the law came from, and remarks of that sort. I presume you will find that very few applications were made to me for discharge. There was a man, after the Board of Health was organized—I forget the precise name—he was complained of by the Board of Health, or some one in their behalf, of keeping a soap-boiling establishment as a nuisance. He was convicted and sentenced to

the Island. I believe there was an application made before me for his discharge. I allowed the writ of *habeas corpus*. I was sitting at Chambers at the time, and there was a consent that he be discharged on giving bail to answer at the General Term. I then made the remark that I would not discharge him. I told the counsel, although he had the consent of the District Attorney, that I would examine the question. I recollect very well making the remark; and when I have granted discharges I have felt that I have done wrong, for I was not acquainted with the law. I thought that I could look over the law in a short time. I took the case up, and I went from my room to my breakfast table. I looked through all the statutes, and I looked at the common law, and found, after investigation, that I had no power to take bail after conviction for a petty offence; and it led me into a very extensive search of authorities, and I spent the whole night in studying the question. I told the counsel that there was no way in which the prisoner could be regularly discharged, and that the practice had been irregular. I came down to Chambers in the morning, and I believe when I went in Judge Barnard and Recorder Hackett were in the old brown-stone building, and I recollect very well remarking then that I had been examining this question, and that I had come to the conclusion that the practice was irregular, and I thought it was a great abuse, and I said I would announce my decision and inform the Bar. I sent for Mr. Hall, and he came down, and I told him of this case, that I had examined it, and I said to him, "Mr. Hall, I think this is all wrong; there is no power to discharge on the part of the Court;" and I said, "You must never send any more consents to me; I shall pay no attention to them; there is no power to discharge on the part of the Court;" and then went into Court, and announced my decision, giving reasons for it, and I stated the grounds and the examination I had made quite at length. Since that—I cannot say what year it was—I have never had any application made to me to discharge a prisoner.

Q. In that case was there a *certiorari* and bail offered on the *certiorari* to the General Term? A. Not to my recollection, and yet I may be mistaken. These forms, I know, were printed, and kept in the District Attorney's office, and I presume this recognizance was got up, and I believe it was a common law *certiorari*.

Q. Was it the case of a *certiorari* to the General Term, returnable at the General Term? A. Yes, that was the point. My recollection is distinct about that. I asked Mr. Hall, "what became of all these cases in which we were in the habit of granting for years, discharges; I never see them on the General Term calendar." Of course the result is, that a prisoner who can get bail goes unpunished. I recollect that conversation, and that is all my experience upon that subject. I cannot say that there has been an application since. I have no memory upon the subject at all. I have never spoken on the subject to Judge Cardozo at all, and I never announced my opinion on the subject, and never had any conversation with him.

Q. Have you ever known of a case of such a discharge where there

was no *certiorari*, no recognizance, and no traverse to the return raising any question of the truth of the final commitment? A. There may be questions of jurisdiction which might never appear on the traverse. In the hurry of business in these matters you don't often wait for a traverse. Sometimes you have three hundred men waiting for business, and a large calendar. I have been as careless as anybody. I have the case called. Somebody generally says, "This is a *habeas corpus* case." "What is it, bring it on. What do you want?" and they say so and so. Perhaps the counsel has the *certiorari* and return. He frequently raises the question of jurisdiction without any formal traverse, so that I don't think the papers will always show. I cannot name any instance, but I know I was hurried myself very much in those matters, and if the commitment was regular I remanded the prisoner, and if there was a question of jurisdiction I have looked into it.

Q. By a jurisdictional question do you mean appearing on the face of the papers? A. They would appear on the face of the papers. I will not say but what I may have discharged prisoners on a jurisdictional point. I have no particular case in memory, but I speak from what I imagine to be a line of duty. A prisoner can always raise a question of jurisdiction; it is never too late.

Q. The question is whether you have ever known of a discharge in such a case unless the falsity of the conviction appeared by evidence before the Judge? A. I don't know that I have.

By Mr. HILL:

Q. Supposing it was recited, that two Police Justices held court, and you issued a writ of *habeas corpus*, and in fact there was only one of these Justices? A. There should always be two.

Q. You asked the District Attorney how that was? A. I do not know; we would not have any admissions; I should hesitate to discharge in such a case; but then I should if I found it was the fact that in such a case there was only one Judge.

By Mr. FULLERTON:

Q. You would not think a Judge corrupt who should discharge in such a case? A. No.

By Mr. NILES:

Q. I understand you to state that this examination you made when you arrived at this conclusion with regard to the discharge, was about 1866? A. It was soon after the organization of the Board of Health.

Q. I want to ask whether your conclusions in that case were published in all the daily papers? A. I cannot say; I wrote no opinion; there was a good deal of feeling about that case, because he was a rich man, and had got prominent lawyers to defend him; he was reported to be rich. I certainly did feel an interest in the case.

Q. Do you remember whether that announcement was made in the daily papers? A. I do not remember; Judge Dean was the counsel for this man.

Q. Do you remember ever having talked with Judge Cardozo, or while he was present about this matter? A. I have no recollection of ever having any conversation with Judge Cardozo; I may have done so. I recollect talking to Judge Ingraham and Judge Clerke.

Q. During the last two or three years, do you recollect of having the question discussed among the Judges with regard to the large number of discharges that were made on the ground of the illegal constitution of the Court of Special Sessions? A. No, sir; I don't recollect any such conversation.

Mr. Parsons here offered and read in evidence, check No. 636 B, of the Gold Exchange Bank, to the order of Osborne & Camack, for $58,850 in currency; dated September 27, 1869; signed "H. M. Benedict, President;" indorsed "Osborne & Camack;" stamped "paid September 28, 1869," and punched.

Adjourned to Monday, February 26.

FEBRUARY 26TH, 1872.—FIFTH AVENUE HOTEL.

The Committee met at 10:20 A. M., and recalled JOHN D. TOWNSEND, who was sworn and examined by Mr. PARSONS:

Q. Have you copies of the two affidavits which you stated were submitted by you to Judge Cardozo in the Pearsall and Connor case, and subsequently placed in the hands of the crier or clerk? A. I have a printed copy, which is a perfect copy, and I have an office copy.

Q. Are they the two affidavits verified May 12th, 1869, before Robert H. Johnston, Notary Public. A. Yes, sir.

Mr. FULLERTON. Did you recently apply for a writ of *habeas corpus* in the case of a man by the name of Knapp? A. Yes, sir.

Q. Before whom did you apply? A. Judge Cardozo; a writ of *certiorari*, I think it was; it is within two or three weeks; the man was convicted at Special Sessions and sent to the Island; within ten days after his conviction I obtained the writ of *certiorari*.

Q. Didn't you the *habeas corpus* afterwards? A. That was afterwards.

Q. Who allowed the writ of *habeas corpus*? A. Judge Barrett.

Q. Before whom was it heard? A. Judge Barnard.

Q. What became of the prisoner? A. Gave bail, which was accepted by Judge Barnard, and he was discharged.

Q. What was the ground of the discharge? A. On the ground of the writ of *certiorari* allowed within ten days after the conviction of a person at Special Sessions; that writ is applied for, and it goes to the General Term.

Q. On what ground was the *certiorari* allowed? A. On the ground

that the weight of evidence was against the conviction; I have forgotten the exact points.

Q. You brought him from the Island? A. Yes, sir.

Q. Where did you take him first? A. Before Judge Barnard, and Assistant District Attorney Sullivan was present.

Q. Did Judge Barrett take the bail? A. He allowed the bail, but Judge Barnard took it.

Q. Do you know whether the recognizance is filed? A. I suppose so; I don't know; it was left with Judge Barnard; in his possession.

Q. Do you know what he did with it? A. I won't say that; it was taken by Judge Barnard's clerk in Chambers

Q. Do you know whether it reached Judge Barnard's hands or not? A. No, sir.

Q. You have paid no attention to it since? A. No, sir.

Q. You don't know that it is filed? A. No, sir.

Q. Who ordered the discharge? A. Judge Barnard.

Q. Sure? A. Yes, sir.

Q. It was not Judge Barrett? A. No, sir.

Q. The man is now at liberty? A. I presume so.

Q. The *certiorari* was allowed on the ground that the weight of evidence did not warrant conviction? A. Yes, sir.

Q. Any charge of want of jurisdiction? A. I think that was put in, but no great stress was laid on it, because the General Term decided otherwise.

Q. You did make the point that there was no jurisdiction in the Court? A. Yes, sir.

Q. You knew the General Term had decided it? A. I did not until I had the *certiorari;* but I heard it the next day; I knew there was a dissenting opinion.

Q. Why, want of jurisdiction? A. Because two Judges were not sitting at the same time.

Q. What was Mr. Knapp's first name? A. Patrick or Peter; Patrick, I think; I remember now, it was Patrick.

Q. What was he convicted of? A. Keeping a disorderly house.

Q. For how long was he sentenced? A. Twelve months.

Q. Any fine? A. I think not. I have not heard of any.

Q. Is that the first instance in which you have sued out a writ of *habeas corpus* for a prisoner after conviction? A. Yes, sir.

Q. You say Judge Barrett granted bail? A. Yes. He asked me what authorities there were for his granting bail under such circumstances, and I cited the second volume of Edmond's Statues, and Judge Barrett took the papers, and the following morning he told me he would fix the bail at $500. It was taken before Judge Barnard and he swore the bail and took the recognizance.

Q. Was Judge Barnard holding Chambers? A. Yes, sir; that month, and Judge Barrett, when I applied to him, was there to take Judge Barnard's place on account of sickness. When I made the first application to Judge Cardozo, I found that my time of ten days was

about expiring, and I was told in the Chambers that Judge Barnard would not be there before ten o'clock, and I found the only other Judge sitting was Judge Cardozo in Oyer and Terminer, and I applied to him for a *certiorari*.

Q. Was it expected that this *certiorari* should be argued? A. Oh, yes; I had to give notice to the District Attorney at the General Term to argue it.

Mr. PARSONS. This proceeding was upon a *certiorari* taken in good faith to carry the conviction to the General Term? A. Yes, sir; it is strickly according to law.

Q. And within ten days it is provided that such an application shall be made? A. Yes, sir.

Q. Does not the statute make it the duty of any Judge sitting anywhere at any time, to allow a writ of *habeas corpus?* A. This is the ordinary form of *certiorari* taken after the conviction; I don't know.

(Mr. Parsons here read the affidavits adduced and proved by Mr. Townsend: the copies produced by him.)

City and County of New York, ss.:

ANNA PEARSALL being duly sworn, says: I reside at No. 76 Crosby street, in the city of New York; that on Thursday evening, the 7th day of May instant, at about one-half past seven o'clock two men called at my house and demanded admission; that after entering the house I was informed by them that they had authority to arrest me and also my sister, Johanna Connor, who was then residing with me. They then showed me some warrants or process, all of which were signed by Justice Cardozo, of the Supreme Court; one of which charged me with keeping a disorderly house; I was informed by the officers that they were deputy sheriffs. Before leaving my house I desired to know whether I should be allowed to return upon that night, as I would like to make some arrangements in regard to my house, if I was not to be allowed to return. I was informed by the officers that I would certainly be allowed to return, as Judge Dowling was waiting at the Sixth Precinct Police Station, and would dispose of the case immediately; I then requested that I might be taken to the station-house in my own district, as I could prove by the officers there that I did not keep a disorderly house. The officers refused to take us there, and my sister and I were taken by the officers to the Sixth Precinct Station-House. There we were confined all night; on the following morning we were taken by the same officers to the Supreme Court room, where Judge Cardozo was presiding. No questions were asked us by Judge Cardozo of any kind; no further remark made that reached my ears than as follows, in effect: "I will commit these women to the Tombs."

I was taken, with my sister, from the said court-room to the prison, where we have ever since remained confined. I have never received any official notice of the cause of my detention. I have never been brought before any magistrate on the charge made against me of keeping a disorderly house. I have never had an opportunity afforded me of explaining or meeting any complaint which may have been

made against me. I have never seen any affidavit upon which my arrest may have been based. In fact, I have been confined in prison some six days, utterly ignorant of the cause of my imprisonment, except what I have heard in conversation with those who have been allowed to visit me in jail. I am a sister of Mrs. Julia McGraw, the defendant in the proceeding now pending before Mr. Justice Cardozo. I am informed that I am charged with aiding and assisting my sister in removing herself and child beyond the jurisdiction of the Supreme Court of this State. If this is to be the cause of my imprisonment, I solemnly assert that I had no part in it. I never advised her to leave, nor did I know she had any intention of leaving before she departed. My sister did not live with me for more than a week before she left New York. I have had no communication with her since she left, nor have I heard from any source whatever where she lives, and I am at present utterly ignorant of her whereabouts or the whereabouts of her children. On the other hand, I affirm that I regretted the course she adopted.

I have been advised that her counsel, Mr. Vanderpoel, had sanguine hopes that the ruling of the Judge would be in her favor, and she would not be deprived of her children. I should have advised her to a different course if I had known she intended to absent herself. I have never yet heard that the decision was adverse to her, or, in fact, that any decision had been rendered in the proceedings. I was not subpœnaed as a witness upon the said proceeding had before Justice Cardozo. A day or two before my arrest, Judge Dowling called at my house, and at his request I accompanied him to the court-room, where I saw Judge Cardozo. I was told by Judge Cardozo that my presence was required before him on the 8th instant; I told him I would be there, but on the evening of the 7th instant, as I have stated, I was arrested.

I solemnly assert that this was the only notice of any kind that I received during the pendency of said proceeding, that I was desired as a witness. My health is being impaired by my confinement; this can be attested by the physician at the Tombs.

My house in Fifteenth street, where I was about to move at the time of my arrest, is without guard and protection, and I am informed that it has been ransacked and much of the property been destroyed since my detention. I ask that I may have accorded to me the justice which is supposed to be meted out to all, to wit, the right of being heard upon the charges made against me, and that speedily.

(Signed) ANNA E. PEARSALL.

Sworn to before me, this
12th day of May, 1869.

ROBERT H. JOHNSTON,
Notary Public,
New York County.

City and County of New York, ss.:

JOHANNA CONNOR, being duly sworn, says, that she is a sister of Anna E. Pearsall; that she has read the foregoing affidavit of her said sister, and that the same is true of her own knowledge, so far as it relates to her arrest, to her detention in the Sixth Precinct station house, to her being taken on the following morning before Mr. Justice Cardozo, to his remark at the time, to her commitment at the Tombs, and to her subsequent detention.

And deponent further says, I never received any official notice of the cause of my detention. I was arrested upon two warrants or attachments; I have never been accorded a hearing, or furnished with any statement of the cause of my arrest. I have heard it said that I was suspected of giving aid and assistance to my sister, Mrs. Julia McGraw, in withdrawing herself and children from the limits of this State.

I solemnly affirm, if this be the cause of my present detention, that I did not render her assistance in any manner whatever, to aid her in her departure; that, on the contrary, from what I learned as the opinion of Mr. Vanderpoel, my counsel, I was impressed with the belief that the decision in the proceeding being held before Mr. Justice Cardozo would be favorable to her. I have never heard that any decision had been rendered in the case; I didn't attend as a witness during any part of the proceedings charged in her case, nor was I ever subpœnaed to attend. I never received any intelligence from any source, as to the route taken by my sister since she left, nor have I heard from any source whatever of her present whereabouts. All of the foregoing affidavit by my sister, as above set forth, as applicable to, and bearing upon myself is true I also ask in common justice that I may be allowed to confront the witnesses against me.

(Signed) JOHANNA CONNOR.

Sworn to before me, this 12th day of May, 1869.

ROBERT H. JOHNSTON,
Notary Public,
New York County.

At the request of Judge Cardozo, Mr. Thos. G. Shearman was called to the stand, and testified as follows:

Testimony of THOS. G. SHEARMAN, examined by Mr. Fullerton.

Q. You are a member of the firm of Field & Shearman? A. I am, sir.

Q. How long have you been a member of that firm? A. Since the early part of 1868.

Q. You recollect the day called "Black Friday" in the Stock Market? A. I do.

Q. Where were you on that day, the 24th of September? A. In the morning I was down town at my office, No. 4 Pine street; in the after-

noon I came up early in the afternoon, according to my custom at that time, to the Erie Railway office, and remained there, untill I went home to Brooklyn in the evening.

Q. You resided in Brooklyn, then? A. I did.

Q. Were any litigations talked of on that day, growing out of gold transactions on the 24th of September, 1869? A. None in my presence.

Q When did you first hear of any suggestion of litigations growing out of the gold transactions of "Black Friday"? A. The first I heard of it was on Monday, the 27th. I learned that an injunction had been granted by Judge Sutherland against some clients of ours, in the case, if I remember aright, of Dana against Dotey, though Dotey was not our client.

Q. What was the nature of that litigation, that you learned? A. I understood it was to obtain an injunction against some disposition of moneys arising out of a gold contract. I had not seen the papers at that time, and therefore had no more definite idea of it than what I give you now.

Q. Be kind enough to go on and give the origin of any litigation growing out of the transactions of "Black Friday," against clients of your firm, or in behalf of clients of your firm, and state particularly what was done in respect to these litigations—as succinct a history as you can? A. Do you wish a narrative of arious incidents that led to litigation, so far as I know?

Q. Yes, and what they were and how conducted? A. As I said, I lived in Brooklyn on Saturday, the 25th of September. I knew, as every one else did, by common report, that the Gold Exchange Bank had been unable to effect its clearances, and that Wall street was in very great difficulties; that there was a general panic, and no one could, at that time, see their way out of the difficulty. I went home, I think—yes, I know—at a very late hour on Saturday night, and on Sunday I was called for. A carriage came over to take me over to New York. I went over, but found nobody that could tell me any particular reason why I was wanted. I spent some hours waiting there, and meanwhile different brokers dropped in.

CHAIRMAN. Where did you go? A. This was at the Erie Railway office. Different brokers dropped in, but it was a long time before any officers of the road came in. Brokers came in very much exhausted, and some of them dropped right down on the floor and fell asleep. Some of them went to talking with me. One of them told me that the Gold Exchange Bank, to use their own phrase, "was sewed up." A number of clerks had been employed, night and day, without any intermission. Fresh clerks had been put on, and yet they were unable to approximate the balances of their transactions. After an hour or two more, Mr. Gould came in, and other gentlemen whom I knew. One of these getlemen that came in, in this manner, before Mr. Gould, and to whose conversation I listened, was a gentleman who stated that he had been requested by the Gold Exchange Bank to come in and try to get his account straight. He said

he could not do it—had used himself up. A great deal of that kind of conversation went on after Gould came in, and about midnight it was agreed, I don't know at whose instance, that we should all go down to the Gold Exchange Bank and see how they were getting on. Accordingly we started down in carriages. It was raining very hard, and we arrived at the Gold Exchange Bank a little after twelve o'clock. There we found, I should think, two hundred clerks working by gas light as hard as they could. I met two or three officers of the Bank. I could not state their names. The Cashier was one and the President another. I could not identify them if I could see them.

Mr. TILDEN. Be good enough to mention names? A. I could not.

Q. Give the best of your recollection? A. To the best of my belief, I believe Mr. Benedict was one.

Q. I mean the gentlemen you met at the Erie office? A. I can recollect Mr. Gray, for one.

Q. What Mr. Gray? A. That I cannot recollect; I think he is the gentleman called in by the Gold Exchange Bank, but he was a broker, and told me so.

Q What Firm? A. There was a firm of Gray, Prince & Co.; I should not like to assert that he was the Gray of that firm.

Q. Were any of these gentlemen whom you met at the Erie office, persons who became plaintiffs in any of the suits you brought. A. Yes; but I cannot say how many of those.

Q. Cannot you recollect some one man whom you saw there? A. Mr. Henry M. Smith was there; he subsequently became plaintiff, though not against the Gold Exchange Bank.

Q. It is desirable to have this testimony as definite as possible? A. This was three years ago, and it is not possible to recollect; it didn't impress me at the time of being any importance to remember who were in the office that night; there were a great many, but I could not identify any one, except gentlemen connected with the Erie road, or this Mr. Smith.

Q. When you state that you saw gentlemen at the Erie Railway office, brokers, and you remember the condition of excitement and exhaustion in which they were, it seems to be the proper time to ascertain who they were, because it might be necessary to connect one part of the transaction with another? A. I don't know; they were all strangers as they came in; I did not know any one of them as they came.

Q. Were you not introduced to them by name? A. No, sir; I was not introduced even to Mr. Gray, but hearing people talking to him, I learned the name, and afterwards addressed him by it.

Q. Then whom did you hold conference with at the Erie office? A. Gentlemen, who were strangers to me.

Q. What means had you to advise gentlemen in consultation, who were strangers to you? A. I did not advise. The amount of it is, that I probably saw some hundreds of persons that night, taking the

interview at the Erie Railway office and the Gold Exchange Bank together, and didn't know the names of a twentieth part of them. I think I was introduced to Mr. Benedict, the President of the Bank, at the Bank, but I would not be too positive even as to that. I recollect a gentleman spoken of as the Cashier, and that then I was taken forward by somebody, I cannot say who, and that we talked with this gentleman; but I cannot say positive he was the Cashier. Well, in this interview at the Gold Exchange Bank it was mentioned in the presence of quite a number of gentlemen, including the officers of the Bank, that Mr. Gould had agreed to advance $75,000 to the Bank, to enable it to effect its clearances. Mr. Gould repeatedly expressed his anxiety that the Bank should be able to effect its clearances, and get through the business of Thursday and Friday. At that time the Bank had not even made up its statements for Thursday. In the interview that took place between Mr. Gould, myself, and those officers of the Bank, whoever they might be, not only was the fact of Mr. Gould's having already advanced or agreed to advance $75,000 to the Bank referred to repeatedly, but there was conversation on the subject of doing more, advancing more in order to enable the Bank to clear, and he asked them how much would be necessary for him to advance in order to enable the Bank to get out of all of its difficulties and go on. I can't recollect what amount was named. It was something large. Mr. Gould then asked, if he advanced that sum would it be certain that the Bank would go on. Some little hesitation was expressed as to that, and then I withdrew from the conversation, and don't know what the result was. Mr. Gould remained talking with the officers of the Bank for some time until I left, about one o'clock in the morning; I think Mr. Gould left about the same time I did; he did not go with me in the carriage; I drove to the Astor House and stayed all night; in the morning I went to my office, No 4 Pine st., Monday morning, and then I learned for the first time of the commencement of this litigation to which I referred, Dana against Dotey (or Data), an injunction being granted by Judge Sutherland: I was very much exhausted; paid no attention to that matter; it was left in the hands of my firm; I learned that the Gold Exchange Bank was not going on; was not making its clearances; and that is all I can remember of learning; then I went up town in the afternoon. No, I have made a mistake; I was sent for to see some gentleman connected with the firm of Smith, Gould & Martin in Wall street; I went down to Wall street, and went from one office to another; I don't know how many broker's offices I went into that day; my impression is that I went into the office of Osborne & Camac; met a number of brokers and talked with them about the affairs of the Gold Exchange Bank; I think on that day there began to be some talk of the necessity of a litigation, in order to break the "deadlock," as it was called; but what kind of litigation was suggested further than injunctions, I cannot recollect. On the next day, Tuesday, the 28th, I obtained an in-

junction from Judge Clerke, which was not connected with the gold business, but arose out of the general panic. It was a stock injunction.

Q. State the case? A.

ERIE RAILWAY Co. }
agt. }
THE UNION BANK, }

and a number of other banks, in which it was alleged that these banks were about selling a quantity of stock owned by the company, without giving notice, and without enabling the Erie Railway Co. to redeem this stock; I went to Judge Clerke myself, and he read the papers; he made a very slight modification in the injunction, and then signed it; that same afternoon I went to the Erie Railway office, and all that afternoon, Tuesday, after say about four o'clock, there was a perfect procession of brokers, more than I was ever introduced to, ever knew before, or have known since, and officers of the Gold Exchange Bank, and counsel of the Bank, and it seemed as if about everybody interested in gold and stock transactions was coming up there; they walked in, and made themselves perfectly at home.

Q. The Erie R. R. office is at the corner of Eighth avenue and Twenty-third street? A. Yes, sir; pretty much all of them talked to me; I really could not identify, or begin to identify every person who talked to me, or asked my advice on the subject; I gave advice in general terms, to everybody who asked it; well, at a late hour that evening, it was reported that the Gold Exchange Bank was entirely unable to go on—could do nothing; and that the sum of between two and three millions of dollars had been paid out to the friends of the directors of the Bank; I state this as a report, merely; I am not pretending to give evidence that that was the case; it was currently talked of among all the parties in that room and reported to me; three or four gentlemen who were interested in the affairs of the Bank came there, very anxious and excited, and I cannot tell who it was at first suggested that it would be necessary to get a receiver; I heard the thing talked of; finally, Mr. Charles J. Osborne, of Osborne & Camac, came up to me, and requested me to prepare papers for the appointment of a receiver on his application; I dictated the papers accordingly; I was very much interrupted, because I wanted to get the constitution of the Gold Exchange Bank itself, and also the charter of the Gold Exchange Bank; and my impression is, that somebody did have a charter of the Exchange Bank, and no one had a copy of the rules of the Gold Exchange, and that troubled me very much in preparing these papers; and it was owing to that that it took me so long; the papers themselves were short, but I spent several hours in getting them in shape.

While I was going on with the preparation of that suit, Mr. Henry M. Smith and Mr. Gould came to me, and seemed to be excited about some other subject, and said that the Gold Exchange, they thought, was about to close out contracts with parties on the street, without

reference to the Gold Exchange Bank and the terms of the contract, and they were apprehensive that the summary measures about to be taken by the Gold Exchange would ruin all the street, and then wanted to know if there was not some remedy against such proceedings; I told them I thought the contracts could not be carried out by the Gold Exchange in any other way than was contemplated by the parties at the time they were made, and there was no good ground for the enforcement of any contracts on any other basis; I commenced, therefore, the preparation of papers on the application of Smith, Gould, Martin & Co., to restrain the Gold Exchange from closing out their contracts; finding I had more than I could get through with, especially with the constant interruptions to which I was subjected, being called upon for advice and to receive news from twenty or thirty people; I sent for Mr. A. J. Vanderpoel, to assist me; he arrived at a rather late hour—ten o'clock in the evening.

MR. TILDEN. Tuesday was the 28th? A. Yes, sir; Mr. Vanderpoel came; he didn't render me any particular assistance in the preparation of papers, but he greatly relieved me by taking charge of these people who wanted to talk, and after that time he did most of the talking, leaving me to superintend the preparation of papers; their preparation occupied me a long time, and I kept my clerks hard at work, after the complaints were prepared; in two or three instances I was not satisfied, and started afresh; the result of it was that by twelve o'clock that night, I saw we were not going to get through until morning, and Mr. Vanderpoel and myself had a consultation in which we agreed that if this Receiver should be obtained, it was desirable he should be obtained before ten o'clock to-morrow morning, so that he could be on hand before the Bank opened, and no further money should be paid out; we acted on the belief that over $2,000,000 of money had been paid out wrongfully, and we wanted to stop that by the appointment of a Receiver; so I told Mr. Vanderpoel all these papers would occupy me and my partner, Sterling, all night, and that he would take charge of the matter of applying for a Receiver; and we recommended that he should get it at as early an hour as possible; there was some little conversation—very slight—between us, as to who was the right Judge to apply to; I said Judge Clerke, of course; and then he said in substance—I can't recollect his words—that Judge Clerke would not be down before ten o'clock in the morning; and there was some talk as to its being proper to go to Judge Clerke's house; we didn't either of us like that idea; it was perfectly right, but then we thought some clamor might be made about it afterwards; accordingly it was agreed that Mr. Vanderpoel should go down to the Court House, and should apply to any Judge who might be there; Judge Cardozo was in the habit, as I knew then and know now, of attending at the Court House somewhat earlier that any other Judge; the others were not apt to get down before the time appointed for opening the Court, whereas Judge Cardozo would come down a half an hour earlier, and therefore, I did conceive it as a possible matter that this order might

be obtained from Judge Cardozo; but I said to Mr. Vanderpoel that my preference was that if he could get the order before ten o'clock from Judge Clerke he should do it; I had no doubt whatever of his obtaining the order from Judge Clerke as well as from Judge Cardozo, and if in my hands I should be much more confident; however, I left it to Mr. Vanderpoel; at twelve o'clock my partner, Mr. Sterling, laid down to sleep for four hours, and at four o'clock I waked him, and I laid down to take the first sleep which I had had that night; I told him to call me at eight o'clock; as a matter of fact, I believe they did not call me until between half-past eight and nine; then, of course, Mr. Vanderpoel was not there; I did not know what had happened or what he had done, and do not know to my own knowledge what he has done about the matter; at about half-past ten o'clock I went down town with papers upon which I intended to apply for an injunction in the case of Henry M. Smith and others against the officers of the New York Gold Exchange; I went with those papers myself before Judge Clerke; he looked over them, and said in substance: "This seems to be all right, but I think one of the plaintiffs is a relative of mine—James G. Bates; I have an impression that Mr. Bates is a nephew of my wife's, and I had rather not do it." "Of course," I suggested, "I can apply to some other Judge." He said, "Certainly;" Judge Ingraham was in the room; he said, "There is Judge Ingraham;" I went to Judge Ingraham and showed him the papers; he looked over them very carefully, and the only objection he made was that there was no affidavit except the verification of the complaint; I pointed out to him that the verification was in peculiar form, so as to distinguish clearly between allegations which were upon knowledge and those which were upon belief only; but he said he did not like to grant the injunction upon a complaint upon any verification without any additional affidavit; I said, "I can get that affidavit very soon, if your Honor is to be here;" he said, "I am going away; I don't see why I should be troubled with it; it is Judge Clerke's business;" I explained the reason why Judge Clerke should not act; he said, "That is too distant a relationship; at any rate," he said, "I can't be bothered with it; you must go to some other Judge;" I said, "It is by leave that we apply to some other?" He said, "You can settle that with Judge Clerke;" I then asked Judge Clerke's permission to go to some other Judge, and he said, "Certainly, go to Judge Cardozo;" accordingly I went to Judge Cardozo's house; he looked at the papers, and the first question he asked me was, whether Judge Clerke had sanctioned my coming before him (Judge Cardozo); I said he had, and I stated my interview with Judge Ingraham, and explained the objections Judge Ingraham had made; Judge Cardozo said he thought that was not a sufficient objection; he commented on the form of the verification; said that was a verification upon positive knowledge, and that was sufficient.

Mr. TILDEN: Which case was this in? A. Henry Smith *et al* against the officers of the Gold Exchange. Accordingly Judge Cardozo signed that injunction; first, however, modifying it to make it in effect an order to show cause, and restrain in the meantime.

Mr. FULLERTON: What time did you get to Judge Cardozo's house? A. Somewhere between twelve and two o'clock; I should think about one o'clock on that day; I ought to say that I will not be absolutely certain that I am not confounding this injunction with another one which happened the next day; I didn't think it necessary to say this before, but it is right to say so in consequence of the question as to the time I was at Judge Cardozo's house; all these incidents happened on Wednesday or Thursday; that they happened there is no doubt at all; it is my decided impression that they happened on Wednesday, but I may be wrong.

The next day, having in the meantime seen Mr. Bates, and learning that he was no relative of Judge Clerke, or any one related to Judge Clerke, I had another injunction which I wished to obtain—Henry M. Smith against George H. Bend. The first suit was Henry M. Smith against Townsend, Cox, &c. The second against George H. Bend.

This injunction, as I recollect, was precisely the same as that of Smith against Cox. Having found that Judge Clerke was no relative to the party in suit, I went this time to Judge Clerke, and the moment I mentioned the matter to him, he said, "Oh, yes, I found out all about that. I am no relative of this Mr. Bates, and know nothing of him." Accordingly, after looking over the papers, he signed the injunction; I then said to him, as near as I can recollect, "I have another case here of Palmer against Cox, in which I want an injunction, but I think it right to mention that this is exactly the same thing, and against the same parties as in the case of Smith against Cox, which you declined to sign, and which Judge Cardozo did sign, and for that reason I leave it to you to say whether you will sign this other, or whether I shall go to Judge Cardozo;" he told me to go to Judge Cardozo, inasmuch as they were precisely the same; accordingly, I went to Judge Cardozo with this second injunction, and he signed that; this injunction of Smith against Cox was obtained on Wednesday, the 29th; Smith against Bend, which was signed by Judge Clerke, was on Thursday, the 30th; at the same time I obtained this injunction in the case of Smith against Bend from Judge Clerke, I applied to him for an injunction in the case of Edward K. Willard against Wm. H. Neilson and others; that was an injunction against the Stock Exchange, and substantially in the same form, and based on the same principle as the injunctions against the Gold Exchange; Judge Clerke looked over those papers; I think that he expressed his willingness to sign them, and no disapproval of the injunction, except the objection to signing it, because his son was a member of the Stock Exchange.

Mr. TILDEN: That was the objection? A. Yes; that his son, Wm. B. Clerke, was a member of the Stock Exchange, and thus might be, therefore, constructively, a party to the suit; I argued with him to show that this was not so; that the Stock Exchange, not being a corporation, this was a suit only against the officers of the Stock Exchange, and could not be considered in any aspect a suit against his son; and he said he rather thought I was right, but still he wanted to avoid the

appearance of acting in such a suit, and he would rather not sign such an injunction; and again he referred me to Judge Cardozo; Judge Cardozo asked me if Judge Clerke had sent me there; he would not look at the papers until he asked me that; Judge Cardozo then signed those two injunctions.

Mr. FULLERTON: Did he examine the papers carefully? A. He examined them hastily, as every Judge must; he seemed to read every word in the papers; these are all the injunctions and proceedings, so far as I am concerned, which took place while Judge Clerk was on the Bench, and holding the regular Special Term.

Q. At Chambers, you mean? A. Yes, sir; Judge Cardozo was assigned to hold the regular Special Term for October, and accordingly he took his seat on the first Monday of October; that, I think, was the 4th of October; on that day Messrs. Lloyd and Hamilton sent for me, and I think it was Mr. Hamilton I saw at his office; he explained to me that he had a large claim against the Gold Exchange Bank, and that they were anxious to have their claim protected, and they wanted to know what were their chances of getting a Receiver appointed, and whether that would protect their claim, and hasten its payment; I told them I thought it would certainly protect their claim, and result in their being ultimately paid sooner than if they did not take any independent action; accordingly they instructed me to commence proceedings for the appointment of a Receiver; I told them of course the same Receiver would be appointed; that was the uniform rule, and on the same day papers were prepared and the order made by Judge Cardozo, appointing the same Receiver, and in the same terms as the order which he had made in the original suit of Osborne; on the same day I had an interview with Mr. Enos, or his partner; I think he was of the firm of Quinlan & Enos; I certainly interviewed Mr. Quinlan, but cannot say whether I saw Mr. Enos or not; I am not certain which of them directly instructed me to commence their suit; that was a suit of exactly the same nature as the suits of Smith against Cox, and Palmer against Cox, as near as I can recollect; in that case we obtained an injunction from Judge Cardozo in nearly the same terms as before; on the next day, the 5th of October, we were informed by our client, Mr. Osborne, that a suit was being commenced against him and other parties by Messrs. Heiser, and that the Messrs. Heiser had also commenced a suit against George H. Bend and others of substantially the same nature as the suit we had brought on behalf of Henry M. Smith *et al.*; we appeared for some of the defendants in each of these suits on that day; in both of those cases injunctions were obtained, which were of the same general nature with injunctions which we had obtained before; I cannot recollect what Judge granted them.

Q. Who were the plaintiff's attorneys? A. Foster & Thompson, of Wall street. On the same day, October 5th, Mr. B. F. Carver desired me to commence a suit against the Bank of the same general nature of Osborne's suit, and in that suit we again got the same order with the temporary appointment of the same Receiver. This seems to

comprise, as near as I can recollect, all the injunctions and receiverships which our firm obtained during the months of September and October. Another injunction in relation to the gold speculation was obtained, but not until December. That I did not know anything personally about. It was done by my office. I understood that other parties applied for receiverships against the Gold Exchange Bank, and got the same order for protection of their interests. With that I have nothing to do.

Mr. NILES. If you are through with your general narrative, be kind enough to state whether each one of these plaintiffs for whom you appeared was at the Erie R. R. office on that Sunday night? A. I cannot say that any one of them, except Mr. Smith and his partners, was at the office on Sunday night. Messrs. Lloyd and Hamilton, I am sure, were not.

Q. Did you see each one of those at the Erie R. R. office, prior to the time you obtained the injunction? A. No, sir; I didn't see all of them.

Q. Saw some of them? A. Yes.

Q. Which? A. Mr. Osborne, Mr. Smith and his partners, or two of his partners.

Mr. TILDEN. Mention their names. A. Jay Gould and Henry H. Martin, Mr. E. K. Willard, and Mr. W. B. Palmer, and I may have seen Mr. B. F. Carver. I cannot say.

Q. Did you see Messrs. Carver and Lloyd and Enos in connection with Jay Gould, or any member of the firm of Smith, Gould & Martin, prior to the time you obtained the injunction in this case? A. When I obtained the injunction for them respectively?

Q. Yes. A. I don't recollect that I saw any of those three with Mr. Gould. I don't recollect that I saw Mr. Enos or his partner in company with any of those gentlemen. I think I went to their office alone. I believe I saw Mr. Hamilton, of Lloyd & Hamilton, on one occasion, in company with Henry M. Smith, but at the interview which I had with him on the subject, when he instructed me to commence the suit, no one accompanied me at all. As to Mr. B. F. Carver, I cannot recollect how that was.

Q. As to Enos, did you hear his name mentioned as a party interested in this matter by either member of the firm of Smith, Gould & Martin before you went to his office? A. I cannot remember that I did.

Q. Which of those plaintiffs had, prior to "Black Friday," been your clients? A. I had had interviews with Mr. Willard.

Q. Prior to that time? A. I don't know that we had commenced or defended any suits for any of them except the firm of Smith, Gould & Martin.

Q. Had you received any retainer from either of them prior to that time; any fee? A. I am in doubt about Lloyd & Hamilton. As to the others we have not received, so far as I know, any fee except from Mr. Smith and his partners.

Q. Was there any conversation between you and Gould or any member of the firm of Smith, Gould & Martin, in regard to the sending for A. J. Vanderpoel before you sent for him? A. Yes; I told Mr. Gould I wanted to send for him.

Q. Did you speak to Mr. Gould before anybody spoke to you about A. J. Vanderpoel? A. Yes; it was my own idea entirely; I made the first suggestion; when I sent for him, I had no idea of sending him to apply for the orders in the case; my idea was to have him help me with the papers.

Q. Had you ever, prior to that time, been associated with him as counsel, except in Erie Railroad cases? A. Do you mean me personally, or for my firm?

Q. Both ways? A. I don't know that I personally had been associated with Mr. Vanderpoel in matters which in some way related to the Erie Railroad Company or some of its officers, but my firm had; I knew Mr. Vanderpoel very well before I had anything to do with the Erie Railway.

By the CHAIRMAN:

Q. Look at this summons and complaint, marked "Exhibit L."

E. K. WILLARD
vs.
WILLIAM H. NEILSON *et al.*

Is that the original summons and complaint in your office? A. Yes, sir; I think so.

Q. The complaint, with the exception of the plaintiff's name and one verbal alteration, is in print? A. Yes, sir.

Q. Will you state if you know then, the circumstance of that complaint being written without the plaintiffs' names in it, or with a different plaintiff's name in it? A. I think I had it printed in this form because I forsaw that in the first place there were to be a number of copies served. That was the reason for printing it. In the second place there were likely to be several suits of this kind.

Q. Did you use that printed form in any other suit? A. Not as it turned out; I don't recollect as I did.

Q. When that was printed, did you know you were going to commence that suit in the name of Mr. Willard? A. I cannot say; when I drew the paper I knew Mr. Willard was going to be plaintiff.

Q. When you drew the paper, from which that printed copy was made, did you know Mr. Willard was going to be plaintiff in that action? A. Oh, yes.

Q. If that paper had been printed on account of having to serve a number of copies, is that any reason why the name of the plaintiff should not be printed in it? A. No, sir.

Q. You gave it as a reason? A. No, sir; I gave it as a reason for printing. The reason for not having the plaintiff's name in was, I suppose—for I don't recollect giving any instructions about that matter—because we at that time expected to be attorney for more than one person. Each man wanted to protect his own interests.

Q. At the time that was printed with that blank, or with the name of some other party in it, had you been retained to commence other suits of precisely similar character? A. I had not formally; but I thought very likely I would be.

Q. You will observe that the words "City and county of New York" are cut off from the top of the complaint; that then these words are written in, and that then the portion cut off from the top is pasted on. Would that have been so if there had been a blank, and another name had not been printed there? A. How can I tell? I should think it quite possible that another name was printed there.

Q. Now look at this paper (Exhibit O), in the case of Enos agt. Cox and others. In whose handwriting is the body of the complaint? A. The bulk of it is in the handwriting of Mr. Sterling. Part of it is in the handwriting of the clerk in the office.

Q. In whose handwriting is all the manuscript part except the plaintiff's name? A. Mr. Sterling's.

Q. The plaintiff's name is by whom? A. That is my own.

Q. The written part of the summons with the exception of the plaintiff's name? A. Some one of our clerks.

Q. In whose handwriting is the plaintiff's name? A. Mr. Sterling's.

Q. Can you explain why the plaintiff's name was not inserted at the time it was drawn up? A. Yes, sir. I was consulted, in one form or another, by so many brokers, all of whom were anxious to protect their interests in substantially the same manner, that if I had said it was wise, I suppose they would all have joined, and I would have commenced suits in behalf of ten or fifteen persons instead of one, and I would say to them, "Now, I think it is unnecessary for you all to join. I think some one had better sue, and then I will talk to them, and select one myself, according to my own judgment. He really sues on behalf of himself and all others. He avows that in the commencement of the complaint." My impression is that this Enos was a partner of Mr. Quinlan; I am not certain of it. I know I associated their names in some way. It would be very natural for me to give directions for the preparation of the complaint, and then to leave a blank until I was satisfied that that suit was to be for Enos alone or both together.

Q. In that case, would not the word "plaintiff" have been left blank, and the word "is" have been left blank, so as to have been put in the plural, if necessary? A. That would be the natural inference; but this complaint was drawn up in a hurry.

Q. Had you commenced suit previously, against the same defendants, for similar cause? A. Yes, sir; the case of Smith agt. Cox, and Palmer agt. Cox, were for very much the same cause.

Q. How long before the commencement of this action were those actions commenced? A. About five days.

Q. You have mentioned the reasons for the plaintiff's name being omitted; are those all the reasons? A. Yes; my impression is, that in each of these successive suits, there was some little supposed defect to remedy; I now in the case of Palmer agt. Cox, the reasons why I

advised Mr. Palmer to commence that suit, was that Mr. D. D. Field in looking over the complaint in the first case—Smith agt. Cox—thought there was some technical defect.

Q. Look at this marked (Exhibit A.)

CHARLES J. OSBORNE,
vs.
THE GOLD EXCHANGE BANK.

You observe within the complaint, the name of Benjamin E. Smith, Jr Apparently, it was crossed out, and the name of Charles J. Osborne substituted. What was the name crossed out? A. I suppose it is Benjamin E. Smith, Jr.

Q. Do you know any such name? A. No, sir.

Q. In whose handwriting is it? A I don't know.

Q. And in whose handwriting is the word Charles J. Osborne? A. That I don't know.

Q. Examine it further, and state whether the name of Benjamin E. Smith, Jr., which is crossed out, is written over the erasure of any name previously written there as plaintiff? A. No, I think not; I think the first name written was Benjamin E. Smith, Jr.; I cannot see the traces of any other name.

Q. That complaint, with the exception of the plaintiff's name, and the amount of money mentioned therein, is in one handwriting? A. Yes, sir.

Q. In whose handwriting is the main body of the complaint? A. Mr. Sterling's.

Q. In whose handwriting are the words added afterwards; the plaintiff's name and the amount of money? A. I don't know

Q. Have you any recollection of drawing that complaint? A. I recollect dictating this complaint to Mr. Sterling.

Q. Do you remember who was intended to be the plaintiff in this action? A. No, sir.

Q. Have you ever heard of Mr. Benjamin E. Smith, Jr., before? A. I have not heard of him before nor since.

Q. Have you ever heard of him? A. I have, but I don't know who he is; don't know where he lives; I have heard he lived out of the State

Q. Why was his name substituted for the plaintiff's? A. I dictated this paper, leaving the plaintiff's name blank and the amount of money blank, and then it got into the hands of somebody else, I don't know who.

Q. Did Sterling have it in charge? A. No, sir; I think Mr. Vanderpoel.

Q. Is Sterling a brother-in-law of Benjamin E. Smith, Jr.? A. Not that I know of.

Q. Have you heard in what State Mr. Smith lives? A. In some Western State, I heard.

Mr. TILDEN: Can you tell whether these names were inserted in your office or not? A. I don't suppose they were; I think it must

have been done under the direction of Mr. Vanderpoel; I think it very likely they were inserted at the Erie Railroad office; I am inclined to think this writing must have been that of Mr. Vanderpoel, although I have not seen enough of his writing to know it.

Q. Who is Mr. Mortimer Smith? A. He is now Assistant Secretary of the Erie Railroad Office.

Q. Can you tell whose writing the pencil mark under the summons is? A. No; but it is very evidently the handwriting of the same persons who filled it in ink; I can see traces of the same.

Q. The ink is written over the pencil? A. Yes; I can understand how that could be done.

By the CHAIRMAN:

Q. The time you dictated you did not understand who the plaintiff was to be? A. I suppose I did not.

Mr. TILDEN: From whom did you expect to get the name of the plaintiff to insert afterwards? A. There were several gentlemen there—creditors of the Bank—all of whom had the same interest.

Q. Whose business were you doing when you dictated that complaint? A. Some one of the gentlemen who were there; no one in particular; I was representing whichever one of the gentlemen determined to begin the suit.

Q. Do you begin suits without having any client? A. No; if I have twenty clients in a room, who are all creditors of one institution, and $2,000,000 has been run away, every one of those wants to commence a suit; it is my uniform advice that they should not all sue together, and I leave it to them which it shall be.

Q. When you drew that complaint, was Benjamin E. Smith, Jr., in the room? A. I don't know.

Q. Was Mr. Osborne? A. Yes, sir.

Q. Were the nineteen others in the room who could have sworn to that complaint? A. I could not say whether there were so many.

Q. Who were there? A. I cannot tell all their names; Mr. Willard, Mr. Gould, Mr. Henry M. Smith; then there was a number of others whose names I cannot recollect, but who, in conversation, stated that that they were creditors of the Bank.

Q. Where was this? A At the Erie Railway office.

Q. Was the complaint verified at that time? A. I presume so.

Q. If Mr. Osborne and the rest were in the room, and the complaint was verified, how comes it that the name of Benjamin E. Smith, Jr., was put there. A. I am sure I don't know.

Q. You say the name of Benjamin E. Smith, Jr., was put there before Osborne? A. Yes, sir.

Q. Then he must have been in the room? A. I don't know that he must have been at all; I don't see that that follows; I can only say that I don't know that he was there, and yet he may have been in the room.

Q. How could his name be put there, then, if the complaint was verified? A. I did not say the complaint was verified at the same

time it was drawn; it was verified the same night; this complaint was drawn somewhere between nine and ten o'clock in the evening, and the verification was made sometime before twelve o'clock.

Mr. TILDEN. Made in the same room? A. Yes, sir.

Q. Did the papers go out of that room during the evening? A. They passed out of my hands into the hands of Mr. Vanderpoel, into the hands of Mr. Sterling, and I suppose into the possession of some of the clerks.

Q. You were all in one room together? A. In a suite of rooms, four altogether.

Mr. NILES. Look at this affidavit, verification of the complaint, and state in whose handwriting the body of it is? A. Mr. Sterling's.

Q. In whose handwriting is the name Charles J. Osborne? A. Mortimer Smith's.

Q. Please look at the affidavit annexed to the complaint, and state in whose handwriting the body of it is? A. Some one of our clerks.

Q. Is the name of Charles J. Osborne, in the beginning of this affidavit, in a different handwriting? A. It is.

Q. Whose is it? A. Mine.

Q. That was also on the 28th of September? A. Yes, sir, before 12 o'clock.

Q. How many rooms have you there, and how located? A. At that time I occupied a small room adjoining the Vice President's room, Mr. Dana's; but the work done this evening was done in the large room, called the Director's room, considerably longer than these two rooms together; not in my private office. It was too small to hold the number of clerks I wanted to employ. That connected with three other rooms.

Mr. FLAMMER. Mr. Vanderpoel left the offices of the Erie Railway Company to get this order? A. Yes, some time that morning.

Q. When did you see the order? A. I don't know that I have ever seen the order since.

Q. Did you go with Mr. Vanderpoel, or were you with him at all, after he left the office in the night until the order was signed. A. I did not go with him or see him.

Q. Did you see him leave? A. I think it likely I did, and yet I cannot say positively I did. I knew soon after he was gone; I knew he was gone by one o'clock or so.

Mr. TILDEN. I wish you would tax your recollection a little about the events which happened when you arrived at the Erie R. R. office on Sunday afternoon; who were the persons present? A. I could not recollect more definitely than I have said.

Q. You don't recollect any persons except Mr. Smith; Mr. Jay Gould, was he there? A. He came in during the evening.

Q. What time in the afternoon did you arrive there? A. One or two o'clock

Q. Who sent for you? A. I don't know.

Q. Did they send a carriage for you? A. Yes.

Q. Whose? A. A stable carriage.

Q. Did a messenger accompany the carriage? A. Yes—not a messenger exactly. It was Mr. Wm. H. Morgan, a lawyer.

Q. In whose employment? A. Like other lawyers, he had plenty of clients, but he was often concerned in litigations in which the Erie R. R. Co. or some of its officers, had an interest.

Q. Did he not mention to you who it was that desired you to come over on Sunday? A. Well, I think the expression he used, was, that they did.

Q. And you hadn't any curiosity to know who "they" were? A. I was perfectly satisfied with Mr. Morgan's request.

Q. Where did you first go when you arrived at the office? A. I think I went through the main door, which leads into the general rooms of all the principal offices of the Company, and sat down on pretty near the first chair to which I came; it was either in the President's or Comptroller's rooms.

Q. It was not in your office? A. No, sir.

Q. Whom did you first speak to? A. I don't think there was anybody there to speak with, except the watchman of the building and Mr. Morgan; he came in awhile and stayed.

Q. Who communicated to you the nature of the business on which you were called to come there? A. Nobody did for a very long time; I don't know in fact that anybody ever did communicate that to me: I seemed to be called on general principles, because Morgan was afraid something was going to happen.

Q. Did Morgan call you to advise him in his professional action? A. He explained to me for one that he wanted advice, though he didn't put it mainly on the ground of his own affairs; he told me the troubles of the Gold Exchange Bank continued, and had been retained as counsel for the Bank. They, to use his own expression, were very anxious to get things arranged; get the Bank going.

Q. Did you suppose when you entered that room that you were then to act in the capacity of counsel for the Gold Exchange Bank? A. No, not strictly; that I was called there to advise all parties; I had no idea there was going to be a quarrel with the Gold Exchange Bank, and I had an idea that I would be called on by the officers of the Bank as well as other parties.

Q. Had the Gold Exchange Bank ever been your clients before? A. No, sir.

Q. You had no reason to suppose you were going to be consulted by the Gold Exchange Bank except from the circumstance of Mr. Morgan being their counsel? A. That is all.

Q. Had he been their counsel before? I didn't know he had.

Q. How do you know he was their counsel? A. Only because he told me.

Q. Didn't he tell you then that you were to be called there to consult about the affairs of the Gold Exchange Bank, and to represent it as its counsel? A. No, sir.

Q. You had no notion then when you entered the room, and began

to engage in business, who was your client, and to whom you owed your duty as counsel? A. I had a general idea.

Q. What was that? A. My idea was that Mr. Gould had large stock in this matter.

Q State frankly whether you didn't understand that you were sent for substantially in behalf of Mr. Gould or Mr. Fisk? A. I presume when Mr. Morgan came that Mr. Gould wanted to see me; I didn't trouble him with any questions on the subject.

Q. Had you any doubt about it? A. No very serious doubt.

Q. Had you any doubt, serious or jocose or light, any doubt whatever? A. I had no doubt Mr. Gould wanted to see me; I had an idea that other people might want to see me also.

Q. Did you see Mr. Gould after you arrived there? A. Not long after.

Q. How long after? A. I should think three hours after.

Q. Did you see anybody who communicated to you Mr. Gould's wishes in the meantime? A. No one.

Q. Was Mr. Fisk there? A. No.

Q. Not there during the day? A. He came there about the same time Mr. Gould came in; I cannot say whether they came together or whether he came in after Mr. Gould.

Q. That was about what time? A. I should think about five o'clock.

Q. Had you no idea that Mr. Fisk wanted to see you also? A. I thought that was very possible.

Q. Had you any doubt about it? A. Yes, sir; the fact was I was in doubt whether it might not be Mr. Gould or Mr. Fisk who wanted to see me; I was in doubt whether it was railroad business, or business arising out of this gold panic.

Q. Suppose there was a conflict of interest between Mr. Fisk and Mr. Gould on the one side, and the Gold Exchange Bank on the other; had you any doubt which side you were on? A. No; I have no doubt if Mr. Gould and Mr. Fisk had asked me to go against the Gold Exchange Bank, I should have done it, and if the Gold Exchange Bank had asked me to go against Mr. Fisk and Gould, that I should not have done it; I knew Mr. Gould was very friendly to the Gold Exchange Bank, and very anxious that it should go through and pay their balances.

Q. How long after you arrived there was it determined to bring the first suit you commenced? A. It was not determined on Sunday nor the next day, though I think there was some little talk about it on the afternoon of the next day.

Q. Between whom? A. Several parties; I can recollect Mr. Gould speaking on the subject to Mr. Fisk; I could not say that they said that to me; it was merely conversation that I overheard.

Q. With whom did you hold that consultation when it was decided what suit should be brought; I speak now of the first suits? A. Mr. Vanderpoel, Mr. Gould, Mr. Smith, Mr. Osborne, Mr. Willard, and other gentlemen, as I told you.

Q. When was that consultation, as near as you can now recollect? A. Tuesday night.

Q. In the interval between Sunday and Tuesday night you held many consultations? A. I had; that is, I had talked with various people whom I had seen; was down on Wall street.

Q. Whom did you consider stood to you in the relation of client up to this time, Tuesday afternoon, when you think the first suit was decided upon? A. Why of course Mr. Gould was a general client of mine; that is to say I was in constant consultation with Mr. Gould and Mr. Fisk about other matters as well as these matters; of course they were my clients.

Q. Will you say the first suit instituted was not instituted in the interest and for the benefit, directly or indirectly, of Mr. Gould or Mr. Fisk? A. Of course, I would not say it was not, because it avows on the face of the papers that it was for the benefit of all persons who are the creditors of the Gold Exchange Bank; and, of course, I understood that Mr. Gould was a creditor of the Gold Exchange Bank; and I took it, therefore, to be for his benefit as well as the benefit of anybody else.

Q. Do you mean to say that was the only way in which you deemed that suit to be for his benefit? A. Certainly.

Q. Do you mean to say that Mr. Fisk had no interests other than his interests as a creditor of the bank? A. I don't believe Mr. Fisk had; I don't believe he had even that amount of interest.

Q. And Mr. Gould had no other interest? A. I never understood or believed he had any other.

Q. Had not one or both these gentlemen an interest to prevent their contracts from being enforced through the Stock Exchange—the Gold Exchange? A. If you put that question simply as meaning what you say, of course, every man has an interest in preventing his contracts being enforced against him; if you ask if that was an interest they had against the Gold Exchange Bank, I say it was not; if you don't mean that, I don't see that it has any relevancy, if you will excuse me, in this inquiry; if you mean to ask me if that was the nature of their interest against the Gold Exchange Bank, I say it was not.

Q. To prevent gold contracts outstanding against them from being enforced by the sale of gold on their account? A. I say they had no interest of that kind in the suit against the Bank.

Q. Had they no interest of that kind in any of these suits? A. Undoubtedly they had, because Gould was plaintiff in one of them.

Q. Didn't you know that these suits, brought in the names of other parties, were brought primarily for the benefit of either Mr. Fisk or Mr. Gould? A. I knew they were brought as much for the benefit of Mr. Gould as the other creditors.

Q. And in no other sense? A. No, sir.

Mr. NILES—What was Morgan's first name? A. Wm. H.; office, No. 50 Wall street; his partner was Richard H. Clark.

Q. How long had he been doing business for the Erie Railway officers. A. About ten months, I think.

Q. How long did Morgan remain at the Erie Railroad office that Sunday? A. As long as I did; twelve o'clock when we went down to the Bank.

Q. He went with you to the Bank? A. Yes.

Q. Was he there on Tuesday afternoon and evening? A. I think not.

Q. Are you sure? A. I cannot say; I know he didn't have anything to say in the preparation of these papers.

Q. Did you understand, on Sunday and Tuesday night, that both Fisk and Gould and the Gold Exchange Bank were represented at that interview by their counsel at the Erie Railway office? A. Yes.

Q. After that interview, which was brought about by the counsel of the Gold Exchange Bank coming to you and bringing you to the Erie Railway office, where you met all these brokers, did you have any other or further communication with the counsel of the Gold Exchange Bank—Morgan? A. After that Sunday? Yes.

Q. How often and where? A. I think both at my down town office and at the office of the Erie Railway Co.

Q. Did you communicate anything to him of the transactions in reference to bringing actions against the Gold Exchange Bank and having a Receiver appointed? A. I cannot say, precisely. I think it is very likely that I gave him some vague intimation of what was talked about, but nothing was determined upon until the evening of Tuesday, so I could not have told him anything decisive.

Q. Do you mean to state that Mr. Morgan had no knowledge that you were preparing papers for the purpose of, and intending to apply for an injunction and Receiver against his client, the Gold Exchange Bank, until the order was signed? A. I could answer your question, but it would be frank to make an explanation here. Before these papers were prepared, Mr. Morgan informed me that other counsel had stepped in at the Bank, and he did not know whether he was going to be employed by the Bank any more. He had not been dismissed, but yet he didn't know as he was going to do anything more for the Bank, and under those circumstances I didn't feel it necessary either to tell Mr. Morgan anything or conceal anything from him. I looked upon him practically as really not any counsel for the Bank. Therefore, I am very certain that he didn't know about these proceedings, but I am not at all certain whether I may not have given him as much of an intimation as the knowledge I had would enable me to give.

Q. Do you remember the time when the settlement with the Bank occurred, where the order was made directing payments to Heath and others, and for substitution of a Receiver? A. Yes, sir.

Q. Were the substitution of attorneys given for certain of those complaints? A. Yes, sir; some to Barretts & Redfield, and others to Newell, Denman & Prentice.

Q. One to the former and one to the latter? A. Yes.

Q. The former had been for a considerable time counsel to the Erie Railway Company? A. No, sir.

Q. Were they not the counsel associated with your firm in the suits

against the Albany and Susquehanna Company? A. They were to this extent: We were counsel for parties who own a majority of the stock in that company, and who, as we thought, succeeded at the election in 1869. It was decided by the Board which came then into power to employ counsel on behalf of the Albany and Susquehanna Railway Company. Barretts & Redfield were selected as counsel, not for the Directors individually, but for the Albany and Susquehanna Railway Company. We did not ask the Board to employ us, and did not think it proper, all things considered, that we should. Mr. Barrett was an old friend of Mr. Church, who was elected President of the road at that time, and in that manner Barretts & Redfield became associated with us.

Q. And they were acting in concert with Field & Shearman and the Erie Railway Company in the effort to secure the election of what was called the Erie Board? A. I decline to give an answer, if you will excuse me, to a question put in that shape. They were acting in concert with Field & Shearman in the proceedings taken to substantiate the election of what was called the Walter S. Church Board of Directors.

Q. That Direction was sought and sustained by Fisk and Gould? A. It was.

Q. One of the grounds on which you thought it proper to get an injunction and receivership against the Gold Exchange Bank was that moneys had been paid out by the Bank to favored creditors? A. Yes, sir.

Q. Wasn't one of the provisions of that order made at the time the substituted Receiver was appointed, that the whole amount due to certain creditors represented by you should be paid in full? A. One of the provisions of that order was that the whole amount represented by certain creditors should be paid in full. (Order of the 9th of October.)

Q. You considered that order unjust, assuming that the Bank was insolvent and unable to pay in full? A. I don't know; I have not considered that question.

Q. Do you now consider that it is just for a counsel to demand, or a Court to grant, payment in full to a plaintiff in a suit brought on behalf of himself and all other creditors against an insolvent institution?

Mr. PARSONS. Not to a plaintiff; to certains creditors?

Mr. NILES. Yes; to certain creditors? A. I must respectfully decline to answer that question, because it assumes several things; in a case I argued before Judge Daniels, he ruled that I, appearing for some parties there as counsel—I cannot say whether it was I or some one else—appearing as counsel for a plaintiff, on behalf of himself and all other creditors, had no right to do anything with his suit until other creditors appeared and joined with him, and that other outside creditors had no right to interfere in that suit until they came in the regular way by petition, and therefore I think it right that the creditor should make any settlement he can of his own suit, and get his own

money out, and whatever else he can, although the institution is insolvent; I believe in that on general principles; every man sues to get his own claim; now, if the other creditors like to go in with him and contribute to the expense of the suit, they can stop anything which is to their detriment; but if they do not, I certainly hold that any plaintiff suing in this matter may settle the suit as best he can for himself; others must bring their own suits.

Q. Then you believe it is right for a counsel to bring an action in the name of one on behalf of all, and then, without giving any notice by advertisement or otherwise, on the next day to settle that suit on the payment to one of their creditors, not named either as plaintiff or defendant? A. Yes.

Q. Why were substitutions made for those plaintiffs? A. Because the view of Mr. David Dudley Field, on that point, did not entirely agree with mine.

Q. On this point to which I have been asking your attention? A. Yes.

Q. Mr. Field did not feel sure that that was right? A. No, sir.

Q. He refused to do that? A. He did.

Q. Now, in that settlement, did you represent anybody after the substitutions? A. No, sir; I had nothing whatever, directly or indirectly, to do with it after that; none of our firm had.

Q. In that case, where your firm differed in regard to the payment of fees, Mr. Field thought that in the absence of explanation to him that these fees to counsel ought not to be paid out of the funds of the Bank, and he doubted whether the Receiver's fees were not too large? A. Yes.

Q. Was that on the ground that the action had been commenced on consultation with and by the assent of the Bank, and through its counsel, and therefore it should not be compelled to pay the whole? A. No, sir; we had nothing to do with it.

Q. Then what was the reason that he deemed it unjust that such reasonable allowance as the Court deemed proper to make should be made against and paid by the defendants, who had been fraudulently misappropriating its funds? A. Nothing except that he did not understand, and our clients insisted that a settlement should be made immediately, and they would not give time sufficient to make an explanation. They said it was all arranged. The Bank consented. Counsel came in and insisted the thing should be done right away; there was no time to delay. He said he wanted time to inquire.

Q. He considered that substitutions could be made, order for substitutions entered, new counsel brought in, and the settlements made in that way quicker than they could tell him why these expenses were charged to the Bank? A. Mr. Field did not consider that matter at all. He considered he would not consent to the thing without taking time to ascertain the facts. He didn't understand enough about it to feel sure that he could approve the settlement.

Q. How long, with the Bank present, and their counsel being present, and the counsel for the plaintiffs present, would it take to explain the

fact as to who should pay that fee? A. I am sure I don't know. I suppose it would have required time to explain the amount of service rendered by the Receiver and his counsel. Neither the counsel for the defendant nor the counsel for the Receiver had done anything.

Q. Who asked to have the counsel of the Erie Railway Company, Newell, Denham & Prentice, substituted as counsel in any of those actions? A. The two gentlemen, Mr. Osborne and Mr. Carver, sent requests to that effect. Messrs. Lloyd and Hamilton sent written requests for the substitution of Barretts & Redfield.

Q. Were those requests sent for from your office? A. I don't think they were. However, that is a matter about which I have no knowledge.

Mr. FULLERTON. There was considerable excitement on Sunday afternoon when these brokers visited you? A. Yes, sir.

Q. Was any proceeding of a hostile character contemplated that afternoon—hostile to the Gold Exchange Bank? A. Not at all. The greatest anxiety was expressed to help it through in every way.

Q. And it was not even suggested, as I understand you, that day, or that night, that any proceedings of a hostile character would be commenced against that institution? A. Not in the least degree.

Q. When was it first contemplated or suggested that such a suit should be commenced? A. I said it might possibly have been on Monday afternoon, but I am not certain of that; I am not certain of any time before Tuesday afternoon.

Q. Was it thought of, so far as you know, until information reached you that disposition was being made of the funds of the Bank, detrimental to the interest of the creditors? A. Not at all; never spoken of until that rumor was stated.

Q. You think the suit was suggested on Tuesday afternoon? A. Yes, sir.

Q. Was it rumored, sir, that the President of the Bank had taken a large amount of funds into the State of New Jeasey? A. I don't know; I did not hear it in that shape; I heard that afterward.

Q. How long after that? A. Not until long after the order was obtained.

Q. Did you ascertain whether it was true that disposition had been made of the funds of the Bank by the officers as reported? A. I was informed that the officers of the Bank had admitted that they had paid out to some particular firms—I think Lockwood was mentioned as one—very large amounts of money.

Q. Was it ever suggested to you by any one, or did you ever suggest it, that you would commence an action in the name of some persons, making that action the instrumentality of the settlement of the gold contracts of Smith, Gould & Martin? A. Certainly not—nothing of the kind.

Q. Was it contemplated or ever suggested that through the instrumentality or influence or medium of these actions they could so embarrass the Gold Exchange and the Gold Exchange Bank, or either of those institutions, that they could settle their gold contracts outside and make a gain?

A. That was not suggested, as you put it. This much was suggested: setting aside entirely the litigation with the Gold Exchange Bank, which had nothing whatever to do with that question, it was suggested that if the Gold Exchange were allowed to go on and force a settlement of its contracts in an unusual way—in a manner not contemplated, as I was told by the parties—it would involve the whole of Wall street in ruin, break every broker in the street, and cause a run upon the banks which would break every bank before the week was out.

Q. Was not that mode of action on the part of the Gold Exchange considered illegal in regard to the fact that their contracts had not been made with reference to the rules of the Sock Exchange? A. No, sir; I was asked that very question and I said no; and I really thought that litigation with the Gold Exchange Bank was an entirely different affair, and one which was only resorted to under pressing necessity.

Q. Then I understand you that there was no action made or suggestion made by any person or persons whatsoever, that Fisk, Gould, or Martin, or Mr. Gould, or Mr. Fisk could be benefited in any way by these litigations, except that they would prevent the Gold Exchange from selling out, or closing up contracts upon any theory or princple other than that which entered into the contract between the parties when the gold was purchased or sold? A. That was all; that was the idea.

Q. Did Mr. Morgan act as counsel for the Gold Exchange Bank—in fact, in any of those cases? A. After the suits were commenced?

Q. Yes. A. He did not.

Q. Who did? A. Martin & Smith, and Judge Emott acted for the Bank, and Messrs. Blatchford, Seward & Griswold for the Gold Exchange.

Q You have spoken of Mr. Vanderpoel having been called in as associate counsel; Mr. Vanderpoel is an experienced lawyer? A. Decidedly so.

Q. In litigated suits? A. Yes, sir.

Q. A man whose services are very valuable? A. Yes, sir.

Q. Where was Mr. Dudley Field? A. Out of town somewhere.

Q. Where was David Dudley Field? A. I think he arrived in town at a late hour on Monday night.

Q. When did Dudley arrive? A. Not until the following week.

Q. What part did David Dudley Field take in the preparation of these papers? A. None at all—not in the preparation of the papers—before the end of September; I am referring only to those papers prepared in September.

Q. I understand you to say there were a number of persons having the same interest in the proposed litigations? A. Yes, sir; substantially the same.

Q. Didn't you, in point of fact, before you hit upon any one person to represent the interest, draw up the complaint in blank, leaving the name and amount blank—in this Gold Exchange Bank case, I mean? A. Yes, sir.

Q. And does not that account for the fact that the name was left blank in the printed paper; that one name was substituted for another? A. There is no printed paper in the case of the Gold Exchange Bank, that I know of.

Q. Does not that account for the fact that your complaint was drawn in blank? A. Yes, sir.

Q. What portion of your time have you spent at the Erie Railway office since you became counsel for the Company? A. I have spent since February, 1869, the greater part of my time at that office.

Q. Did you ever see Judge Cardozo there? A. Never.

Q. On any occasion? A. No, sir.

Q. Ever see him at your own office in Pine street? A. No, sir.

Q. Did you ever have any conversation with Judge Cardozo at any time with reference to those litigations? A. Never.

Q. Further than when you applied to him for those injunctions and the orders he gave you? A. That of course—never at any other time.

Q. Had you any other object or design, other than you have stated, owing to the fact that Judge Ingraham refused to act, and Judge Clerke referred you to him? A. Not at all; I was, on the contrary, very reluctant to go before Judge Cardozo.

Q. What intimacy ever existed between you and Judge Cardozo? A. Not the slightest; on the contrary, I had reason to suppose Judge Cardozo did not like me.

Q. I want you to tell the committee whether you know, or have any reason to believe whatever, that any communication was had by any person whomsoever with Judge Cardozo prior to the order appointing a Receiver or the granting of an injunction in any of those cases on behalf of any person interested in that litigation? A. I certainly did not know of any; I have no evidence at all.

Q. Have you any reason to suspect that there is any? I want to put the question in the broadest possible terms, covering the whole ground. A. I can't have any; when Mr. Vanderpoel went to see him is the time I don't know. That is the only ground I would have, and the only reason I would have, to suspect he might have gone to his house.

Q. Is it a fact that Mr. Vanderpoel is supposed to have communicated with him? Do you know any reason to suspect that any communication was held between him and any other person on behalf of these litigants? A. I am not aware of any.

Q. Was Judge Cardozo's habit of coming down to the Court House early of recent date at that time, or had it existed ever since he had been on the bench? A. It had existed to my knowledge for twelve months before that time; I knew he was very prompt in the time he took his seat on the bench; I did not know for about six or eight months after he took his seat whether he came down so early as he did.

Q. Who was Mr. Redfield, of the firm of Barretts & Redfield? A. Amasa A. Redfield.

Q. D. P. Ingraham, Jr., is the son of Judge D. P. Ingraham? A. Yes, sir.

Q. Judge Barrett took his seat as Supreme Court Judge last January? A. He did.

Q. Do you know George C. Moore? A. I do not personally; I have heard of him.

Q. Do you know who David Hawley is? A. Yes, sir; he is a lawyer; I have understood he was a partner with some son or nephew of Judge Sutherland

Q. A partner of John McC. Sutherland? A. Yes, sir.

Q. Do you know Francis C. Scott? A. No, sir.

Q. Do you know Thomas H. Landon? A. I know him by reputation.

Q. When did you first learn that Augustus L. Brown was appointed Receiver of the Gold Exchange Bank? A. After he was appointed.

Q. Had any suggestion been made to you that he should be appointed, before the appointment was made? A. I think that some mention had been made of the names of the Receivers, or proper persons to be appointed Receiver, and some one, I don't know who, mentioned the name of Mr. Brown. I had no objection to Mr. Brown, personally, but as Mr. Vanderpoel was associated with him, I did not exactly favor it, and I understood the whole idea of Mr. Brown's acting had entirely dropped before Mr. Vanderpoel left the office.

Q. Was it not your suggestion? A. Oh, no, sir.

Q. You made some opposition to it? A. I did make some objection, because I wanted Mr. Vanderpoel engaged in the litigation.

Q. It did take Mr. Vanderpoel out of the litigation? A. Yes, sir; out of our side of the litigation; he acted only for the Receiver.

Q. Had you any knowledge at all that Osborne's claim was paid after the litigation was commenced? A. I heard some one say soon after the Receivership was obtained, that the Bank claimed to have paid him.

Q. You did not know anything about it before? A. No, sir.

Q. At the time of the commencement of the suit, you had not heard that the Bank had failed? A. Certainly not; I read the testimony of one of the officers of the Gold Exchange Bank, before the Congressional Committee, in which he testified that the claim was paid before the Receiver was appointed, but I never believed a word of it; certainly no human being gave me information before the suit was commenced.

By Mr. NILES:

Q. You had heard that the claim of Osborne had been paid before the 9th of October, had you not? A. I had heard it said so, but had not formed a belief on that subject.

Q. Had you not seen that statement in an affidavit in opposition to the Receiver? A. I don't know that I did; no; by that time the case had got into the hands of Mr. Field, and I think it very likely that I did not ask him at all, for that reason.

Q. What illegal thing had the Gold Exchange done or threatened to do, before this suit against them? A. I was informed that they had resolved to enforce the contracts about gold, by selling out gold on

account of parties alleged to be in default, and that they had resolved further to allow parties to be put in default, by a simple demand that they should pay differences, or something of that kind, instead of carrying out their contract.

Q. Did you understand that it was illegal, or in violation of the contract under which the gold was bought and sold, to sell them out, in case they failed to make deliveries or payments? A. I did, because I understood that they were required to make deliveries or payments in the ordinary sense of the word; they were only required to do that through the medium of the Gold Exchange Bank.

Q. Did you ever understand that the Gold Exchange, or the officers of the Gold Exchange, had threatened to require anybody to make deliveries in bulk? A. Yes, sir; so I understood.

Q. Was that intimation true, or had you anything more than rumor that it was true? A. The information I derived from other persons.

Q. Did you ever see such a resolution? A. I did not.

Q. Did you ever know anybody to swear that such a resolution was passed? A. Unless they did it in those suits that Foster & Thompson brought, for example.

Q. You did not see any affidavits that it was true? A. I am not sure that it is not contained in some of these very complaints. I did not, unless in these complaints.

Q. Did you understand it was illegal to ask them, or in violation of their contract to ask parties to pay their differences? A. Yes, sir.

Q. Did you not understand that that was the very ground on which you made your complaint of the Gold Exchange Bank, that they had not made their clearances so that people could know what their differences were? A. Certainly, I do think it was illegal for the Gold Exchange to require parties either to deliver in bulk or pay the difference, when those differences were not ascertained through the medium of the Gold Exchange clearances.

Q. Then I understand you to state that if a broker had made the sale to another in the morning, and had made a purchase of an equal amount from another in the afternoon, and the Gold Exchange Bank or its officers refused to take that account, it would be illegal to compel the party against whom the difference was to pay it? A. Excuse me, but you are omitting the necessary part of the facts. Where parties had made a contract, one for the purchase and the other for the sale of the gold, both agreeing that they should be carried out through the medium of the Gold Exchange clearance house, and no other way, I did think it illegal to compel either party to carry out their contract other than through the medium of the Gold Exchange clearance house, or to pay differences ascertained in any other way.

Q. Did you think it would be illegal for parties having made transactions, or the parties themselves having made these transactions, against whom the differences existed, to send a check or the bills, or gold, or the difference, directly to the broker, and take his receipt for that difference, and pass that into the Gold Exchange with his statement as paid in full? A. That assumes that the parties themselves

agreed to do it. It was lawful for parties as between themselves to do anything upon which they agreed.

Q. Exactly; now then was it not in the power of all parties to make those agreements in spite of the Gold Exchange? A. Yes, sir; but they did not choose to do it; a large number did not choose to, and those that did not, I think could not be compelled to. Some allusion was made to the fact that a difference of opinion existed between Mr. David D. Field and myself about this settlement, and therefore I wanted to explain just what it was. As this settlement was represented to me. I saw nothing that was improper about it. I considered that the Gold Exchange Bank was bound to pay all the expenses of the appointment of a Receiver, and as to this particular sum of money, I thought that was a matter which the plaintiffs and the Bank had a right to settle between themselves, and no one else had a right to object, and I did not inform myself concerning the particular facts of this amount of money, and I did not know, of course, whether it was actually due or not, though I believe it to be. Mr. Field wanted to be actually informed about that, and he also doubted, differing from me on that point, whether the Bank should be required to pay the expense of procuring the appointment of a Receiver, and for that reason he would not take our fees. I had no doubt on the subject, and have not now. I know it is a usual and proper practice.

By Mr. TILDEN:

Q. State in that connection whether you did not understand that the payment of those fees was a condition of the change of one Receiver for another? A. In the original plan?

Q. Yes, sir. A. Yes, sir; I had.

Q. That the Bank had no power, as was supposed, to get a Receiver in whom it had confidence to settle its affairs, unless it paid these fees? A. That is putting a large question; I do not know anything about that; I don't know but what they had confidence in Mr. Brown, but my impression was that they thought that Mr. Jourdan, who had been, and I think was then cashier of some bank in that interest, could understand the business better than Mr. Brown, and I understood he could borrow any amount of money necessary to put this Gold Exchange Bank on its feet again; if he could get in and take possession, he could raise money enough to pay all the debts of the Bank and set it going; of course, I don't know the facts; I only know these things were said by Mr. Jourdan in my presence and before the officers of the Bank. In a subsequent conversation it was determined that the Bank never could go on unless Mr. Jourdan, or some one like him, came to the rescue and raised money enough to get its accounts straightened up.

Q. In other words, that it would be a benefit to the creditors and stockholders interested in the institution to have a different Receiver appointed instead of Mr. Brown? A. To have this particular Mr. Jourdan appointed; he represented, I understand, some particular creditors, and they were willing to advance additional money to get the

bank out of its difficulties, provided they could have, through Mr. Jourdan, the control of the institution.

By the CHAIRMAN:

Q. They could not get that change made without paying these large fees? A. They could not get the consent of our clients to it.

Q. Then they were under coercion to that extent that they wanted this change made and could not get it? A. They were under coercion to this extent: they wanted the change made, and they could not get the consent of our clients to have it made except in this way, and they did not want to have a fight in court about it; no objection was made; these claims were settled by the counsel of the Bank without even a consultation with me—even the fees that were appointed to be paid; they came to me and said they proposed to put in $5,000, as proper to be paid to the plaintiff's attorneys.

By Mr. TILDEN:

Q. Did you hear at any time a suggestion that Mr. Jourdan would have an advantage in raising money through the greater confidence that moneyed men had in him than in Mr. Brown? A. No; I never heard a word said against Mr. Brown—a word implying that he was not perfectly capable.

By Mr. PARSONS:

Q. You have spoken about an injunction granted by Judge Sutherland; state the suit in which that injunction was granted? A. The suit of Dana and others against Dater and others.

Q. Did the injunction order obtained in that suit enjoin clearances on gold contracts by the Gold Exchange Bank? A. I cannot remember.

Q. Have you any recollection that it did? A. I have no recollection one way or the other.

Q. Have you ever seen the papers upon which such an injunction granted by Judge Sutherland was made in that suit? A. I think I have seen them, but never paid much attention to them.

Q. Can you give any intelligible account of the case for an injunction made by those papers? A. I don't think I can, except I remember a defect in the verification, on account of which the injunction fell to the ground.

Q. Who were the plaintiff's attorneys in that suit? A. I don't know; I could find out at the office.

Q. Who were your clients who were party defendants to that suit? A. Even that I cannot remember now.

Q. Did you ever hear that in that suit a Receiver was appointed by Judge Sutherland, or any application made to him for such appointment? A. No.

Q. Had not Mr. William H. Morgan, who came for you on Sunday night, formerly been a clerk of Field & Shearman. A. You make a mistake: it is Wm. H. Morgan; he had formerly been a clerk in our office.

Q. Down to what time? A. About October, 1868.

Q. Had he subsequently acted in concert with Field & Shearman in litigations affecting the interest of the Erie Railway Company? A. Yes, sir.

Q. And in such litigations had he represented the Erie Company side or the side opposed? A. The side friendly to the Company

Q. Had he acted directly for them in such litigations, or had he acted for their interest, assisting them? A. Directly for them, occasionally as attorney, more often as a kind of junior counsel.

Q. How recently, prior to his calling for you on September 26th, had he acted for the Erie Railway Company? A. Oh, frequently.

Q. And down to that time? A. Yes, sir; I suppose so, though I don't know of anything pending at that time in which he was engaged.

Q. You have stated that you had been kept late at your office on the Saturday night preceding—to which office do you refer? A. The Erie Railway office.

Q. How late had you been kept there? A. I think after ten o'clock—no, I was not so late, come to think of it; I think I left there about eight o'clock.

Q. What detained you? A. Consultations and conversations with different people.

Q. Do you mean in reference to matters growing out of the transactions of "Black Friday?" A. I think they were mainly; not entirely.

Q. Of the persons in consultation, was Mr. Jay Gould one? A. Yes, sir.

Q. Mr. Fisk? A. Yes, sir.

Q. Other members of the firm of Smith, Gould, Martin & Co. A. No; I don't recollect that they were there on Saturday.

Q. Was either member of the firm of E. K. Willard & Co. there? A. That I cannot recollect.

Q. How late on Saturday had you been in consultation with Mr. Gould or Mr. Fisk in reference to this subject? A. I should think seven o'clock in the evening.

Q. Down to the time you left the Erie office? A. No; not exactly; I think I stayed for some time after they concluded their conversation, to wind up other matters.

Q. Do you mean to say you don't know the business in reference to which Morgan called? A. You are asking a question that I cannot answer. I mean to say I don't know positively what particular business Mr. Morgan called for. I was informed, while I was lying down, that he wanted me directly. I went off without waiting for any explanation, and on the way he informed me what was going on. It was about matters connected with the gold panic.

Q. For whom? A. I don't know. I think he referred to Mr. Gould, Mr. Fisk, and probably, I could not say for certain, one or two of the officers of the Gold Exchange Bank, and two or three other gentlemen, he informed me on the way, were having a consultation.

Q. Can you name any one of them? A. Mr. Gray.

Q Name any of the persons who were spoken of as officers of the Gold Exchange Bank? A. I have a strong impressson that Mr. Morgan told me that Mr. Benedict, the President had retained him; I believe it was spoken of, but I do not recollect his name or whether his name was Benedict.

Q. When, prior to Mr. Morgan calling upon you on Sunday in Brooklyn had you last seen Mr. Morgan? A. That I cannot say; I might probably have seen him the day before. I recollect very well seeing him on the Thursday previous.

Q. Have you any doubt that you saw him on Saturday? A. Yes, I have some doubt.

Q. Or on Friday afternoon? A. I have not much doubt that I saw him on Friday.

Q. Had he not been in consultation or conversation with you in reference to this gold matter subsequent to the time on Friday when the interviews between Mr. Gould, Mr. Fisk and yourself took place? A. I cannot recollect that he had; it is very questionable whether he had.

Q. Was Mr. Morgan in the habit of calling frequently at the Erie Railroad office? A. I think he was.

Q. How frequently? A. It is impossible for me to tell, because he was not very much in the habit of calling on me. Occasionally he did call.

Q. Who did he call on? A. He called on Mr. Fisk and others, various persons.

Q. You have stated that on the Sunday afternoon or evening, persons in a state of great excitement came to the Erie Railroad office, some of whom laid down and went to sleep, were they all brokers? A. I suppose that they were.

Q. Did you understand them to be brokers? A. I did.

Q. Did you understand them to be brokers who, as such, had contracts for the receipt of gold? A. They told me but I didn't believe there was a broker on the street who had not such a contract.

Q. Do you remember any one telling you that these persons who called at the Erie Railway office were persons who as brokers had pending contracts for the receipt by them of gold? A. I believe so.

Q. Can you state whether you knew who were the principals for whom these persons as brokers had these contracts? A. I did not, except in one or two cases.

Q. In those cases whom did you learn to be their principals? A. In one or two cases, I understood that Mr. Henry M. Smith was the principal one.

Q. Of the firm of Smith, Gould, Martin & Co.? A. I can only say what I heard; Mr. Smith would say he had given orders to some brokers; I presume probably it was the same firm.

Q. And did you not learn at that time that these were contracts of Jay Gould through his firm of Smith, Gould, Martin & Co.? A. That is a question which, although I have no objection to answer, I must

decline to answer, because it was communicated to me in confidence as counsel, and I have no right to answer it; I have answered a great many questions which I conceived not admissable.

Q. Tell me the names of such brokers as you can remember? A. I should decline to answer that question; that implies that a communication was received from my client.

Q. The question that I ask, Mr. Shearman, is, who were the persons who called at the office of the Erie Railway Company on Sunday afternoon and evening, when the conversations, which have been testified to, took place? A. Mr. Gould was there; I am asked what my client said to me as counsel.

Q. Did you not testify that some of these persons told you that the Gold Exchange Bank had been sewed up? A. Yes; I don't remember exactly what I stated, but I can state now.

Q. Who was the person who told you that? A. I think Mr. Gray said something of that kind.

Q. Did you not state a moment since that you could not tell anything said by Mr. Gray? A. Except his statement about his hard work; he had been working very hard; he was quite exhausted. He said they had an immense force to work and everybody was sewed up.

Q. Was Mr. Gray interested in any of the suits that were commenced? A. Not unless he was a creditor of the Gold Exchange Bank.

Q. Was he, so far as you know, interested in any of the suits commenced? A. Not that I know of.

Q. Was anything said by Mr. Gray or yourself with reference to a suit being commenced in his interest? A. Not that I know of.

Q. Was he in the position, according to anything which he said, of a plaintiff in respect to this litigation? A. No.

Q. Can you suggest the reason why these brokers, of whom you spoke, came to the Erie railway office on that occasion? A. I thought, judging from their conversation, that they all looked to Mr. Gould as the only man who was willing and able to extricate the Bank from its difficulties; they expected him to raise enough money to carry the Bank through.

Q. Were not these brokers, without exception, brokers for Mr. Gould, or in his interest, in respect to contracts for the receipt by him of gold—on a purchase? A. I don't know.

Q. Can you name any one who was not? A. I have no idea that Mr. Gray had any connection with Mr. Gould.

Q. Is he the only one you can name? A. He is the only one.

Q. Do you mean to state that there are none other of these brokers whose names you can now recollect? A. I do.

By Mr. NILES:

Q. Whom you subsequently came to know the names of? A. I mean to say that there were several there on Sunday night. I am not certain, but I think a Mr- Dzondi was there, but I am not certain that

he was; it comes to me now that he might have been there. I know the names of no other brokers who were there on Sunday night.

By Mr. PARSONS:

Q. Was not Mr. Willard there or some member of his firm? A. I don't know.

Q. Do you mean that you don't recollect? A. I do.

Q. Who was the person who stated on Sunday afternoon or evening that he had been requested by the Gold Exchange Bank to come there and to see what could be done towards getting accounts straight? A. I cannot state anything of that; I believe that one of the officers of the Gold Exchange Bank came up there on Sunday evening.

Q. What officer? A. I cannot specify.

Q. Did you see him? A. I saw some one there, and I was told he was one of the officers.

Q. Did you have any conversation with him? A. I think he was in my presence; he didn't say very much.

Q. Can you state anything you heard him say? A. I can't say.

By Mr. NILES:

Q. Have you seen him since? A. Not to identify him; I must have seen him again the same evening.

By Mr. PARSONS:

Q. Did any person, that same afternoon or evening, say anything to you to the effect that he had been requested by the Gold Exchange Bank to come there with inference to getting the accounts of the Bank straightened? A. I don't remember any one, but at the same time, I recollect very well that Mr. Gray claimed to represent the Bank, and came there for the purpose of talking about its accounts, and advising some measures.

Q. Did not Mr. Gray claim to be a creditor of the Bank? A. He didn't say so in my presence.

Q. Did you not understand him to be a creditor of the Bank? A. Only by this general inference that I formed that every broker in Wall street was a creditor in some shape.

Q. Was Mr. Gray, of whom you spoke, of the firm of Gray, Prince & Co.? A. That is my impression, but I am not sure.

Q. Do you remember that Mr. Prince, of that firm, was the surety on one of the undertakings on which was obtained one of these injunctions? A. Yes, he was.

Q. In what case? A. In Palmer *vs.* Brooks.

Q. Now state whether you did not understand at that time, that Gray, Prince & Co. had been brokers for Mr. Gould, in these gold transactions of theirs, or for Smith, Gould, Martin & Co.? A. I certainly didn't understand anything at all; I met Mr. Gould there on Sunday; I have no idea that he was in any way connected with it.

Q. You have stated that on Sunday evening, you, with others, went down to the Gold Exchange Bank in carriages; who were the persons who went there? A. I can't remember; very likely Mr. Gould went down in one carriage, and Mr. Morgan and I went down in the other

Q. Was anybody in the carriage with Mr. Morgan and yourself? A. Yes, sir.

Q. Do you rememder who? A. A broker from Wall street.

Q. Do you remember the statement given by you on your examination by Judge Fullerton, that when you reached the Bank you found a large number of clerks—you stated in the neighborhood of two hundred who were trying to clear the accounts of the Bank—is that a fact? A. Yes; that was my estimate of their number at that time.

Q. When did you begin to prepare papers, and in what suit first of any of the suits that was subsequently commenced? A. About gold?

Q. Yes. A. I first began on Tuesday evening.

Q. And in what suit? A. I am in doubt whether it was the Osborne suit or what suit against the Gold Exchange Bank.

Q. Had you in the meantime been again to the Gold Exchange Bank? A. I think I had been there, but I had done nothing.

Q. Did you still find this large number of clerks at work trying to clear up the accounts of the Bank? A. I am not certain that I went at all; I do not recollect seeing these clerks. It may serve to explain my difficulty in remembering people we met, by saying that I am very short-sighted, and at that time did not wear strong glasses, and consequently could not recognize any one, so that unless I actually entered into conversation with gentlemen, I was unable to say whether I saw them or not.

Q. Is it a fact, and have you already in substance stated that what was required of these contracts for the purchase of gold in which Mr. Gould was interested as preliminary to any proceedings against him by the Gold Exchange, was a clearance by the clerks at the Gold Exchange Bank at its clearing house department? A. Yes, sir.

Q. Was not then the first of any of the suits commenced, the Osborne suit, and was not that suit commenced for the purpose of obtaining an injunction and restraining such clearances? A. The Osborne suit was first commenced.

Q. And did not the injunction order restrain clearances by the Gold Exchange Bank? A. It restrained the Bank from doing any business.

Q. And clearing gold contracts was a part of this business, was it not? A. Yes, sir.

Q. In the view which you take of the law applicable to Mr. Gould's contracts for the purchase of gold, did that injunction prevent gold being forced on him under his contracts? A. That was my view of the effect of it.

Q. Was that, in your view, the object of it? A. Excuse me; that is a complex question, and it was not an object of this suit against the Gold Exchange Bank to prevent the possibility of clearances; on the contrary, the object by appointing a Receiver was to enable the Bank to get out of these difficulties and appoint the Receiver to settle. These clearances, of course, in the meantime, until the Receiver commenced operations to carry out the business of the Bank, everything was stayed by the injunction, and until the Receiver went to work, Mr. Gould

was protected against these contracts; when the Receiver went to work Mr. Gould ceased to be protected. The object of the suit was to extricate the Bank.

Q. Was there any provision in the order of the Court that Mr. Brown should clear the contracts to be cleared at the Gold Exchange Bank? A. It was a mere preliminary order.

Q. And did not the injunction in term restrain any clearances of the Gold Exchange Bank? A. It restrained the Bank, not the Receiver.

Q. Could the Receiver after his appointment make such clearances unless by express authority of the Court? A. I did not consider whether he had express authority. The business of the Bank could not be wound up without settling those matters.

Q. Was what you intended to state in reference to the distribution to Willard & Co., and Heath & Co., by the order of the 9th of October, that that was a suitable order as made by Judge Cardozo, because no creditors, up to that time, had intervened in the litigation? A. I know nothing about it; yes; substantially so.

Q. Had Willard & Co. and Heath & Co., intervened? A. No, they had not.

Q. Did you learn, about that time, that Heath & Co., and Willard & Co., in respect to the contracts upon which were made to them the payments, by the order of Oct. 9, acted as brokers for Mr. Gould, or the firm of Smith, Gould & Martin? A. That was a matter which we could only learn from one or other of the parties for whom I was counsel.

Q. Was not the effect of the two orders of Judge Cardozo – the one of Sept. 29, and the other of Oct. 8, 1869—to the Gold Exchange Bank, that it was enjoined from making all clearances, and that Willard & Co., and Heath & Co., received a large amount directed to be paid to them by the order of Oct. 9, 1869? A. That is a question of law.

Q. I ask you as to the practical effect? A. The practical effect as to the injunction was, of course, to prevent the Gold Exchange Bank from paying to anybody except to those who were specified in the final order of Oct. 9.

Q. And all clearances down to that time were prevented? A. Yes; I suppose so. Allow me to say that I did not then fully understand, and do not now, whether the Gold Exchange Bank was necessarily a gold exchange clearing house. I think it is, and I am answering upon that assumption; for aught I know the Gold Exchange Clearing House may be a separate institution. The Gold Exchange Bank is a kind of subordinate matter. Although the clearances were made in the same building, I do not know that there is any importance in that. I did not consider the point.

Q. Down to the time of the substitution in the suits of Newell, Denman & Prentiss, and in the one suit of Barretts & Red-

field, had any papers been prepared to be submitted to Judge Cardozo, when application should be made for an order effectuating the settlement, either to show that the bank was solvent and not insolvent, as asserted in the original order of injuction and Receivership, or for the purpose of showing that no other creditors of the Bank had intervened in either of the suits then pending? A. I cannot say.

Q. Had any such papers been proposed or prepared, to your knowledge? A. That I cannot possibly state now. I think that some papers were prepared on the part of the Bank to show that it was not insolvent. I do not deny that they were unable to pay these debts. They did not pretend to an existing state of solvency which enabled them to pay all their creditors in the way in which they had agreed to pay them, but that they claimed they would be unable to pay everybody in full.

Q. Is that the best answer that you can make to the question put to you? A. Yes, it is.

Q. Will you state positively that you never saw such a paper prepared on the part of the Bank? A. No.

Q. Will you state positively that you have never heard of such a paper? A. I have heard of such a paper, but I cannot say that I had prior to October 9th, 1869.

Q. In justifying the order of October 9th, directing the payment by the Receiver to the creditors named in that order, and the bearing upon that order of the fact that no other creditors had intervened in the three suits, in which was made, this order of October 9th, 1869, do you bear in mind that the suits were commenced on behalf of the plaintiff in the suits as well as other creditors of the Bank? A. I bear that in mind.

Q. Were those suits commenced on behalf of other creditors of the Bank? A. Of course. It is a fact avowed in the complaints; it is understood.

Q. Look at those two complaints and call the attention of the Committee to any such averment? A. I see that the averment is not in these complaints against the Gold Exchange Bank. There is no such averment.

Q. In either of them? A. No, sir; and therefore it removes the only doubt I can possibly have as to the propriety of any order being made by consent that the parties might agree to make. I thought that the suits were brought nominally on behalf of all the creditors. That is the usual form in which I commence such suits.

Q. Do you mean to state it as your opinion that it was just, when upon the ground of the insolvency of the Bank, a Receiver had been appointed, that by the consent of the creditor bringing the suit, an order should be made directing the distribution of nine-tenths of the assets in the hands of the Receiver to two creditors, neither of whom was a party to the suit? A. I mean to say in a suit like this, brought by one creditor not on the behalf of another but on his own behalf, that it is perfectly

proper for him to settle the suit with the Bank on any terms that he and the Bank can agree upon, and of nine-tenths if the assets should go to two creditors, and they are genuine creditors, why, I think the Bank can agree to pay them until some other creditor interferes by injunction. The Bank has a right to prefer any creditors until interfered with.

Q. But the Receiver is an officer of the Court? A. Yes, sir.

Q. Were not the assets in the possession of the Court? A. Yes, sir.

Q. And did not the assets reach the possession of the Receiver upon the ground that the Bank was insolvent and that there was a necessity for the appointment of a Receiver to distribute equally the amounts due the creditors of the Bank? A. A Receiver was appointed, not on the ground that the Bank was insolvent; there remained further allegations that it was unable to pay its debts.

Q. The appointment of a Receiver was to make equal distribution of the assets among the creditors? A. There are three grounds.

Q. Won't you state whether that is one? A. Excuse me; there are three grounds upon which a Receiver may be appointed, and all three were relied upon in one or other of these complaints; that it was insolvent, and if that was denied, then the fact that it had violated some charter or law applicable, as no Receiver was appointed to take custody of the assets of the Bank and to prevent any improper distribution of it, and among other things to prevent any payment to creditors which should prevent the payment to other classes of creditors. This Receiver was not necessarily appointed at the outset to make an equal distribution. That does not follow at all.

Q. Do you know to what amount the Bank was indebted on October 9, 1859, or, in other words, to what amount there were creditors representing indebtedness to the Bank? A. I do not.

Q. State your best information or recollection on that subject?

A. I presume there were creditors to a considerable amount.

Q. Several millions of dollars? A. I have no knowledge.

Q. Did you not learn at that time that the amount was several millions of dollars? A. I have no knowledge.

Q. Did you not learn that the amount was several millions of dollars? A. I cannot say that I had any information upon the subject.

Q. What amount, so far as you have learned, was in the hands of Mr. Brown, as Receiver, when Judge Cardozo, by his order of the 9th of October, 1869, directed the payment to Willard & Co., and Wm. Heath & Co.? A. I don't know; I don't recollect.

Q. Do you recollect that the amount was about $500,000? A. I don't recollect that it was not; I think very likely it was.

Q. Do you not recollect that the amounts payable under that

order to Willard & Co., and to Heath & Co., amounted together to about $400,000? A. No.

Q. What was the amount? A. I don't recollect the amount payable to Willard & Co.; I think it was $75,000; I don't know what was ever paid to Heath & Co.

Q. Did the suit of Osborne *vs.* The Gold Exchange Bank result in a payment of anything to Mr. Osborne? A. I suppose that he got his claim ultimately; I don't know.

Q. In what way? A. Well, I suppose that all these parties eventually obtained their payment of the claims against the Bank.

By Mr. NILES:

Q. In that suit was there the payment of any money? A. I don't think there was any recovery in that suit.

By Mr. PARSONS:

Q. And were the only persons directed to be paid by the order of October 9, 1869, made by Judge Cardozo, persons who were brokers of Jay Gould or his firm of Smith, Gould, Martin & Co., and the Receiver and the lawyers? A. That is asking a question which I cannot answer without using information. If it was given to me at all it was given to me as counsel.

By Mr. NILES:

Q. Didn't you ever hear from Heath and Willard that they had made these purchases on behalf of Mr. Gould? A. I don't know anything about his purchases; I heard from Heath that he had dealings; the fact is, Mr. Chairman, I am simply standing, as a matter of right, where, as a matter of fact, I haven't information; all the information I have about it is in fact very small; but as to those transactions I have no information from Mr. Heath or Mr. Willard that in these matters they were acting for Mr. Gould.

Q. From information derived outside, didn't you hear that they were brokers who were acting in the interest of Smith, Gould & Martin? A. I have heard that they were brokers who had dealings with Smith, Gould & Martin.

Q. Did you not understand that those dealings referred to, were those dealings which they wished to protect themselves against? A. I don't know; I could not answer that question so far as Heath & Co. were concerned; I did form that impression with regard to the amount to be paid to Mr. Willard.

By Mr. PARSONS:

Q. The order of October 9th, 1869, made by Judge Cardozo, was entered not only in the Osborne suit but in others—did that order of Judge Cardozo make any provision for any payment to either of those other parties? A. It does not appear to have done so.

Q. Therefore the order made no provision for any payment to

either the of plaintiffs in either of the three suits, but did make provision for the payment to Willard & Co., and Heath & Co., who were not the plaintiffs in either suit? A. Yes, sir.

Q. You have stated on your examination by Judge Fullerton that on the Sunday evening, there was conversation in which it was stated that Mr. Gould had proposed to advance or was willing to advance the sum of $75,000, or some larger sum —are you accurate in your recollection of the transaction in respect to that $75,000? A. I know that it was $70,000 or $75,000.

Q. But was the $75,000 a sum of money to be advanced by Mr. Gould to the Bank—was that the conversation? A. That was the conversation.

Q. Will you state that positively? A. Oh, yes; that was the amount talked of.

Q. Was not what was talked of that Mr. Gould would guarantee brokers who had made contracts for the purchase of gold on his account to the amount of $75,000? A. That was not what was stated to me.

Q. Will you state positively that you heard anything said in respect to any sum of money to be furnished by Mr. Gould other than what has been suggested to you by my question—money to be furnished by Mr. Gould to guarantee the transactions of brokers on his account? A. Of course, I don't know; I understood that Mr. Gould was to advance $70,000 to $80,000.

Q. With whom, on the part of the Bank, was that conversation? A. I could not be positive; it was, I think, in the presence of the President and Cashier.

Q. When did the conversation take place? A. I think it was at the Erie Railway office; I cannot tell whether either of those gentlemen was present at that time; I heard it again at the Gold Exchange Bank; my impression is that those gentlemen were present, but, as I have said before, I am short-sighted, and I might make a mistake as to the identity of those persons; it might have been other officers and subordinates of the Bank.

Q. Do you mean to state that there was any such conversation at which was present either Mr. Benedict or the Cashier at the Erie Railroad office? A. I say that I think it is probable.

Q. Will you state it positively? A. Oh! no, because I didn't know then, and could only have guessed at their identity from the general talk going on in the room; one conversation took place at the Erie Railroad office, and another at the Gold Exchange Bank.

Q. Do you mean to say that at that time you understood Mr. Gould to be interested in facilitating clearances? A. Decidedly so.

Q. The first paper that was prepared was a complaint for an injunction restraining such clearances? A. That was because he found they were unable to effect them in their own hands;

they all agreed that it never would be done if left to the Gold Exchange Bank.

Q. Do you mean to say that Augustus L. Brown was better able to facilitate and hasten the clearances of the Gold Clearing House than the officer who organized the Clearing House and had conducted these affairs for some years? A. About Augustus L. Brown I do not mean to say anything; I conscientiously believed that some one could be appointed Receiver who would do that better than the officers of the Bank, and I have every reason to believe that the parties around me conscientiously believed it; I went down there, and it looked to me as if everybody had lost their head completely.

Q. It was an injunction to facilitate clearances? A. Yes, sir; to restrain the Bank from doing it.

By Mr. NILES:

Q. Do you believe that you could appoint somebody who would more rapidly and more justly make those clearances than anybody, any committee that would be appointed by the Gold Exchange, the members of which Exchange were the sole parties interested in those clearances? A. Yes, sir. I never believed that any committee appointed by the Gold Exchange would deal fairly by the subject.

By Mr. PARSONS:

Q. Have you stated that no order was necessary to enable Mr. Brown to make clearances—when did Mr. Brown begin to make clearances? A. I presume he never did; he was only in office a few days.

Q. He was in office ten or eleven days? A. That was not a very long time to get possession of affairs.

Q. Did he do anything during that time towards making clearances? A. I don't know.

By Mr. NILES:

Q. Did you do anything during that time towards making clearances? A. I never exchanged a word with Mr. Brown after the appointment until the 8th of October.

Q. Did any of these parties, to your knowledge, at the Erie Railroad office, ask you to hasten the clearances of the Bank? A. I don't know that they did. I now recollect that there was some conversation with somebody afterwards, but I cannot tell you who it was.

By Mr. PARSONS:

Q. You have stated that on Monday there was some talk about litigation to break up the deadlock? A. I think it was somewhere on Broad street.

Q. Between whom? A. Well, between Mr. Gould and myself, and I think also between others.

Q. Was that the first conversation with reference to the litigation that subsequently was commenced? A. I think it was.

Q. And do you mean to state in your opinion that an appropriate proceeding to break the deadlock, was to obtain an injunction and appoint a Receiver? A. I think, under the circumstances, that it was. So many questions have been asked me as to my general opinion about this, perhaps the simplest way would be to state the impressions under which I acted. I will state the impression that was on my mind. I formed the impression that the Gold Exchange Bank was involved in inextricable confusion; that the officers had completely lost their heads in the general excitement on the street; indeed, I thought pretty much all Wall street was crazy. I didn't see that there was anybody clear-headed. Fisk, he was the only clear-headed man around me, and I didn't believe they would be able to come to any conclusion with all the combined force of the Stock Exchange and others. The only way in which the matter could be settled was by the intervention of the Court, which was the only thing that would save Wall street from ruin. I was assured if things went on in that way every bank in New York would break. I recollect Mr. Jourdan saying to me on one of these occasions, that if things were going on as they did every bank in New York would break in two days, and I acted in the honest belief that the interference of the Court would save the whole street from ruin. I impressed that view upon him so frankly that he signed those injunctions. I believe it was the salvation of the whole of New York. Mr. Jourdan was a bank officer, and he told me that he believed every bank in New York was within half an inch of breaking.

Q. Is the interference of the court, to which you refer, the injunction and the appointment of a Receiver? A. The whole series of injunctions preventing the brokers from acting while they were crazy, and preventing the Gold Exchange officers paying out funds, which they were doing in large quantities. The appointment of a Receiver was the only means by which they could be prevented from doing so.

Q. You have stated that on Tuesday, the 28th, you obtained an injunction from Judge Cardozo, in the case of the Erie Railroad against the Union Bank and others. Was that a gold affair? A. It related to stocks.

By Mr. NILES:

Q. I would like to ask you whether Mr. Benedict personally, when he was at the Erie Railroad office, seemed crazy? A. I am not able to say positively that Mr. Benedict was there; I may be entirely mistaken in thinking that he was there.

Q. You understood him to be there? A. Crazy I use in a

modified sense. I thought pretty much all Wall street had lost their heads

Q. Did he express any opinion that it would be impossible for himself and his officers and employees to work in reasonable time? A. Reserving my doubt as to whether it was Mr. Benedict, there were persons from the Bank, as I understood, who did say that they were making no headway at all. As fast as they got the clearances made out on one basis they had to change them, and a communication was sent that they didn't know when they would get through. At first, on Tuesday evening, they did make assurances, that by a little additional aid, by some additional money, they would be able to get through in a day or two. I know, at one time, say early in the afternoon of Sunday, somebody made promises that the Bank would clear Thursday's transactions on Monday. Everybody got into a good humor on that notification; it was a load off their minds, and there were general congratulations, and after some hours had elapsed, it was found that they could not do it, and it was not until Thursday that we understood finally that they could not effect these clearances.

Q. During all this period, from Friday down to Thursday afternoon, did you discover more and more the difficulties? Were the officers not all the time cooler and more collected, and in a position to use becoming judgment? A. I very much doubt if they were. You understand when I am talking about these matters I am talking about representations that were made to me.

Q. You were speaking about what appeared; they appeared to have lost their heads? A. They appeared excited.

Q. The question I ask is whether they were not growing calmer? A. I don't recollect seeing them after one o'clock on Monday morning. At that time they were getting worse and worse. They had champagne standing around the Bank flowing pretty freely. Somebody told me that they were getting drunk. I would not vouch for that; I saw the champagne.

Q. They had made payments of $50,000, to which the parties were not entitled? A. I hadn't heard that sum mentioned; I heard that they had paid out very large sums of money.

Q. Do you infer that? A. To some that were not entitled to it. I heard that they had made up an artificial clearance balance, which was entirely incorrect. They made the figures up in some way, and A, B and C appeared to be debtors, and E, F, G appeared to be creditors, and they paid out to some parties the whole of the amount which appeared to be due to them, but in reality those persons were not entitled to any such sum.

Q. Didn't you deem it a very important matter that they were paying out on fictitious clearance sheets, to parties not entitled to the money? A. Yes, sir, I did.

Q. Did you consider that to be the most important matter that came to your knowledge? A. Yes.

Q. Why didn't you then make that statement in your complaint? A. Because I could not get positive information about that as I could about other things.

Q. You admitted that? A. I do not know why it was. I don't know at this time more than is stated in the complaint, but in one of those complaints it is stated that the officers of the Bank had admitted that fact to the plaintiff.

Q. You got this fact with regard to the balances and payments of money to parties not entitled to it from some parties who knew that it was mere guess work? A. It was given to me as information is often given by persons.

By Mr. PARSONS:

Q. Did you not hear while at the Bank on the Monday evening that the difficulty with the Bank was, that it had more money than it needed, but that there was a difficulty in making the clearances to get out of it? A. I didn't learn exactly that.

Q. Did you learn anything with reference to the amount of money that they had? A. I learned that they had a very large amount of money in actual possession, an immense amount, seven millions of gold was mentioned, and a vast amount of greenbacks, but that money didn't belong to them. The information that I had was that in making these payments on these delusive balance-sheets they had really paid out more than all the money which they had, and made a deficit which would sweep up their capital.

By Mr. NILES:

Q. Do you think that was of sufficient importance to allege on information and belief? A. You see, sir, that was not precisely one of the cases specified by the law under which I proceeded. The law specifies three cases in which a Receiver may be appointed—first, insolvency; second, inability to pay its debts, and third, violation of the charter. Here the Bank keeps an account, A and B, debtor, C and N, creditors. These two sums have got to balance, if there is any mistake one party will get more than he is entitled to, and the other will get less, and if they paid out to the first more than he is entitled to, when the real creditor comes along he must suffer.

Q. To what law do you refer as furnishing the three grounds for the appointment of a Receiver? A. The Second Revised Statutes 470, I think, or thereabouts.

Q. Do you mean the article for the voluntary dissolution of corporations? A. No, sir; I refer to the Second Revised Statutes 463, 464, (original paging) sections 39, 40, and 41.

By Mr. PARSONS:

Q. That is under what title? A. Entitled of Proceedings against Corporations in Equity.

Q. You said on examination by Judge Fullerton that on the afternoon of Tuesday a procession of brothers came to the Erie Railway Company's offices, were they the same brokers who were there on Sunday evening? A. A number of the same and more.

Q. Can you remember any of the others? A. I can't remember specially now.

Q. Who can you remember there on Sunday? A. Willard, Osborne, Farmer, Smith, Martin, and I can't now recall the names of the others.

Q. Who was it that late that evening reported that the Gold Exchange Bank could pay nothing, or anything to that effect? A. Well, I can't say—I don't know the person.

Q. Who was it that said that the Bank had paid out money to the friends of the Directors? A. Osborne for one, I think; other gentlemen did also, but I can't identify them; I recollect that when Osborne so said one time, some of the others confirmed it ina general way, and they had heard so too.

Q. Is that the best answer you can make to the question? A. I think it is, sir.

Q. Who were the gentlemen interested in the affairs of the Bank who talked about the appointment of a Receiver? A. These various creditors.

Q. Do you mean the brokers to whom you have referred? A. Yes, sir.

Q. You mean then persons interested against the Bank? A. That is what I mean.

Q. You stated, after that conversation, Osborne said "sue." Is that the fact? A. I did not state that he used that word

Q. Is it the fact that Osborne gave any direction with reference to the commencement of a suit? A. Oh, yes.

Q. Had any papers been previously prepared in a suit, or for the commencement of a suit before any direction was given by Mr. Osborne? A. Yes.

Q. Had not the complaint in the Osborne suit, with the name of some other person as plaintiff, at that time been drafted? A. The complaint, without the name of any plaintiff, had at that time been drafted.

Q. When was that complaint completed; I mean the draft? A. I can only say that it must have been completed before twelve o'clock, and probably at an earlier hour.

Q. Was it completed as early as ten o'clock? A. That is more than I can say, I think it very likely not.

Q. Was not that complaint drafted on Monday, the 27th of September? A. It certainly was not.

Q. Look at that complaint and summons, and state whether or not the summons, as originally prepared, is not dated Sept. 27, the 28 being written over? A. I can't tell whether it was 27 or 29.

Q. Do you mean that you have any doubt it was written over 27? A. After looking at it in a stronger light, I think now it was written 27th.

Q. And is not that the fact that that complaint was drafted on the 27th? A. It is certainly not; nor the summons either; it was simply a mistake of the clerk that wrote it, dating on that day; there was no clerk in the Erie office at any time on the 27th.

Q. Did you send to A. J. Vanderpoel to come up and assist you in preparing the papers? A. Yes, sir.

Q. Was there anything said to him about assisting you in preparing papers? A. Yes.

Q. Who said that to him? A. I did.

Q. At what time did Mr. Vanderpoel reach the Erie Railway offices? A. I think not until about ten o'clock that night.

Q. Tuesday night? A. Yes, sir.

Q. Had the complaint in the Osborne suit, or that paper which subsequently became the complaint in that suit, then been drafted? A. I think I was just in the course of dictating it when he arrived.

Q. Had it not been completed? A. I think not.

Q. Was the complaint prepared first, or the order for an injunction and Receivership, or were they prepared concurrently? A. The complaint was certainly prepared first; I know that because I dictated the complaint to Mr. Sterling, and left him to frame the order himself, which he could not have done until I had dictated the demand for relief in the complaint.

Q. When did Osborne verify the complaint? A. That is not within my knowledge, because I handed the paper to the notary and relied on him to attend to the acknowledgment.

Q. Did you see the papers subsequently until after the order had been obtained? A. I rather think not; my impression is I turned over these papers as fast as they were finished, for some one else to attend to; Mr. Vanderpoel looked over them.

Q. Have you not stated that Mr. Vanderpoel did not assist you about these papers? A. I stated that he did not render me much assistance.

Q. Did you not use just that expression, that Mr. Vanderpoel came up but rendered you no assistance about the papers? A. If I said so, what I meant was this: I gave one set of papers to Mr. Vanderpoel to write, but he was too much occupied to write a line; I handed him all the papers to look over—that was the object for which he was there.

Q. When did you go to sleep that night? A. About four A. M.

Q. Did you hand him the papers before they were executed? A. I don't think I did; the rooms were open, but very long, and I could not see the notary.

Q. Did you know at that time—I mean on Tuesday evening—that Judge Clerke was the Judge regularly holding Chambers? A. Yes.

Q. Did you not know Judge Clerke was very regular and systematic with reference to the hour at which he reached Chambers? A. No, I did not.

Q. You knew nothing on that subject? A. I did not.

Q. How could you tell that Judge Clerke would not be as early as Judge Cardozo at Chambers on the morning that your application was made? A. I did not say in the first place that I knew that Judge Cardozo would be there first; I say the only reason for applying to him for the order was some remark that he would be early, and I had never heard the same report about Judge Clerke; my own preference was to go before Judge Clerke, and so I said to Mr. Vanderpoel; I thought it had been decided upon.

Q. Was there any difficulty in calling at Judge Clerke's house or sending a messenger to him to request him to be at Chambers? A. There was no difficulty, but I would not have been a party to such a proceeding; I don't see any objection to going to his house, but so much clamor had been made in another litigation in which I had been engaged, that I very much preferred to avoid such a course, if possible.

Q. Was it not the fact that Judge Cardozo's name was mentioned as the Judge from whom should be obtained the order? A. No, sir.

Q. How is it that he was not spoken of when it was said that he would be early at Chambers—in that connection was that mentioned? A. Because we had a little conversation about who would be early.

Q. Was not the conversation then in reference to obtaining the order? A. Yes.

Q. Was it not said, between Mr. Vanderpoel and yourself that Judge Cardozo was the Judge from whom the order should or might be obtained? A. It was said he might be; this was the understanding; I was very explicit about Judge Clerke.

Q. At what hour did you know Judge Cardozo reached the Court House at that time? A. I had no knowledge.

Q. From whom had you information? A. From quite a number of lawyers; Judge Cardozo was said to be found there at half-past nine; and I think I read it in the newspaper.

Q. Do you mean that in the conversation between yourself and Mr. Vanderpoel that subject was considered, and it was

agreed upon that if Judge Cardozo reached Chambers at half-past nine and Judge Clerke at ten o'clock, the application should be made to Judge Cardozo, instead of Judge Clerke who was then regularly holding Chambers? A. Yes.

Q. Who were the persons, whose names were mentioned, one of whom should be appointed Receiver? A. I cannot now remember.

Q. Can you name any other than Augustus L. Brown? A. I don't think I can.

Q. Was he not the person, arranged between Mr. Vanderpoel and yourself, as the person to be appointed Receiver? A. No, there was no person arranged betweeu us. I think Mr. Vanderpoel and myself agreed that it should properly be left to the Judge.

Q. But you had some talk about Mr. Brown? A. Yes.

Q And Mr. Brown was appointed? A. Yes.

Q. Did you not know, at that time, that the result of appointing Mr. Brown, who was the law partner of Vanderpoel, would be to deprive you of the assistance of which you were desirous of receiving from Mr. Vanderpoel? A. I knew that; and that was the reason I wished to avoid it.

Q. Do you mean to say that Mr. Vanderpoel did so without your consent? A. Mr. Vanderpoel had given up the idea.

Q. Did you not say that you did not wish Mr. Brown to be appointed, because the effect would be to deprive you of the assistance of Mr. Vanderpoel? A. I don't think I did, or even conveyed that idea.

Q. I ask you now whether you did not state, positively, that it was not said that Mr. Brown was to be appointed a Receiver? A. It may have been either by Judge Vanderpoel or myself.

By Mr. NILES:

Q. Was it not understood that Mr. Brown was to be the Receiver? A. No, sir.

Q. Were any other names mentioned? A. Yes; but the names I cannot recall; Hugh Smith may have been mentioned.

By Mr. PARSONS:

Q. Who is Hugh Smith? A. He was then Deputy Chamberlain.

Q. Is this the Mr. Smith who has been implicated, according to public report, in the transactions of this city, and the fraudulent payment of large sums of money by the city recently? A. That is very general. I don't know that Mr. Smith was implicated at all, even by rumor. I know that Mr. Smith was the Deputy Chamberlain, and he was then deputy to Mr. Peter B. Sweeny, and in that way may have become associated with these charges.

Q. Who mentioned Mr. Hugh Smith's name first? A. Well, reserving the doubt as to whether it was mentioned, I think Mr. Vanderpoel.

Q. How came he to mention it? A. If he did, I should think because Smith had been three or four times appointed Receiver.

Q. Who had appointed him? A. I don't know the Judge; I understood that Judge Cardozo had once.

Q. Did you ever hear that Judge Clerke, before whom you say you desired this application to be made, had ever appointed either Mr. Hugh Smith or Mr. Augustus L. Brown as Receiver? A. I don't think he had ever appointed Mr. Brown; I am not so sure about Mr. Smith.

Q. Had you heard that Judge Barnard had done so? A. I don't know.

Q. Had any of the other Judges? A. That is my decided impression.

Q. Was there anything in the prior occupation of Mr. Hugh Smith which made him, more than any other person, competent to clear these transactions of the Gold Exchange Bank? A. No; he had experience as a Receiver, and Receivers don't generally understand their duties as experts.

Q. Had he been engaged in any business except as stage proprietor? A. I never knew that.

Q. Did you know him to be engaged in any business? A. I knew very little about him.

Q. Have you stated all that you remember to have transpired between Judge Clerke and yourself, when you applied to him for the injunction against the Gold Exchange? A. I think so.

Q. You think that Judge Clerke intimated no unwillingness to grant that injunction, excepting his relationship? A. I am quite sure he did not.

Q. You say then you went to Judge Ingraham? A. Yes.

Q. There were two cases of that kind, Willard & Co., and Smith *et al.*? A. I can't remember very certainly the case. It was on the 29th of Sept.

Q. You say you then went to Judge Ingraham? A. Yes.

Q. He said he would not make the order? A. Yes.

Q. Why? A. On the ground there were no affidavits, and then when I argued that on the ground that he said he had no time.

Q. Did he read over all the papers? A. I don't think he did. Very carelessly looked at them; I think he looked first at the verification to see whether there was an affidavit.

Q. Where did you see Judge Cardozo when you procured that injunction? A. At his house.

Q. When? A. Sometime in the afternoon.

Q. Did you not entertain the same opinion at that time which you have stated you previously entertained in regard to the propriety of applying to a Judge for an order at his house? A. Certainly, because I have stated that there was not anything improper in him doing so, only I did not desire to do it except in a case of necessity.

Q. When did you get from Judge Cardozo, the injunction in the Willard suit, and where? A. I have said that I am not sure whether it is the injunction in the Smith or Willard suit. I got it at Judge Cardozo's house. One I said I got at his house, the other down town in the Court-House; I don't know the room.

Q. At what hour? A. Must have been before twelve o'clock.

Q. Have you stated all that transpired between Judge Clerke and yourself with reference to, or on the occasion of your application for an injunction in the Willard suit? A. I think I have; I can't recall anything more.

Q. Do you mean to state that Judge Clerke intimated any willingness to grant that injunction, but for the fact that his son, William B. Clerke, was a member of the Stock Exchange? A. That is my impression; he did not express any unwillingness.

Q. You asked for an injunction? A. Yes.

Q. But he did not grant it? A. No, sir, he did not.

Q. Now can you not recollect any other objection except that his son was a member of the Stock Exchange? A. I can not, because I know he told me he had no objection whatever. I remember further because I argued with him to try to show him that this was not an injunction on the Stock Exchange, and would not affect his son, and at one time I thought he would consent to let me have the order, but he finally declined.

Q. Had he read the papers? A. He looked over them, and I presume read them.

Q. Did he read them after seeing that the Stock Exchange was implicated? A. Yes.

Q. You say that notwithstanding his objection to read them through? A. I can't say he read them through; it may be that the mention of the Stock Exchange in the title struck him, and lead him to object.

Q. You say that when you got one or other of the injunctions, either in the Smith or the Willard suit, Judge Cardozo was in the Court House and Judge Clerke was also there? Is that the fact? A. I am confident it was.

Q Did Judge Cardozo detain you until he could see Judge Clerke and consult with him as to what his reasons were for declining? A. No, sir.

Q. And did he not give you the order upon the first application? A. Yes, after he had considered the matter and made an amendment by inserting a section in that case also, providing that the defendants should have an opportunity to be heard on the first Monday in October.

Q. Where was Judge Cardozo when you obtained from him the injunction in the Carver and Lloyd suits? A. I did not obtain them.

Q. Who did? A. I don't know, but suppose it was Mr. Dudley Field, who returned that day.

Q. Do you not remember that you came down from the Erie Railway office in a carriage with Mr. Sterling, your partner, and left Mr. Sterling at Chambers street, to walk down to the office, and that you went into the Court House and obtained from Judge Cardozo those orders? A. That was not the order of the 4th or 5th October, that was the order of the 29th of September. That was the occasion when I went in to see, but did not see Judge Clerke.

Q. Was not that a few minutes after nine o'clock? A. No, sir.

Q. Do you state that positively? A. Very positively.

Q. At what hour was it? A. My impression is that was on the morning of the 29th of September. If it was on that morning, it must have been eleven o'clock, but if it was on the morning of the 30th, it was probably about ten o'clock.

Q. Was any injunction order obtained on the 29th September, with the exception of that in the "Osborne" suit? A. Yes, the injunction in Smith against Cox.

Q. That was a suit against the Gold Exchange? A. Yes, sir.

Q. And did you get that on the 29th? A. Yes, sir.

Q. What did you do with the papers in the suit after obtaining the injunction? I mean the papers on which it was obtained? A. I handed them to some one in our office; probably a clerk.

Q. What is your recollection of the first occasion on which you saw the injunction order, and order appointing a Receiver, granted by Judge Cardozo in the Carver and Lloyd suits? A. I don't know that I ever saw them after they were granted.

Q. I mean before they were granted and after they were prepared? A. In the Lloyd suit I saw some of the papers shortly before they went up to Judge Cardozo; I can't say whether I saw the order itself or not. In the Carver suit I am positive I did not see the order.

Q Were those orders obtained at Judge Cardozo's house or at the Court House? A. I heard at the Court House. He was then holding the regular Special Term Chambers.

Q. When you heard that the Bank claimed that at the time the injunction order and order of Receivership in the Osborne suit were obtained, Osborne was not a creditor, but that his debt had been paid, did you take any means to ascertain the fact? A. I did not then, because the whole thing was over, and it had ceased to be material. The suits had left our office.

Q. Did you not hear it prior to October 4th? A. No, sir.

Q. Have you not so stated on your examination? A. I stated I heard he had been paid, not before the order was obtained, but I heard a rumor that the Bank had raised funds to pay him, in order, it was supposed, to get rid of his suit.

Q. Did you then learn that Osborne had no further interest in the litigation? A. Only from that rumor.

Q. If Osborne had no interest in the litigation, who then was your client? A. Osborne; because I did not believe the rumor.

Q. You mean to say, that on the 8th of October, when the substitutions were given by your firm, it was proper for you to give the consent, although there was a rumor to the effect that your client had no interest in the matter? A. That is a series of suppositions unfounded on fact. You assume, in the first place, that he was the only party I represented, while I represented three different sets of parties, and in the second place this was merely a rumor, and not even the counsel of the Bank ventured to assert it, and if they had asserted it we were not willing to receive it.

Q. Of whom do you speak as counsel to the Bank? A. Martin & Smith.

Q. Were they not also counsel for Heath & Co? A. I can't say. I don't know.

Q. Did they not act for them? A. I remember now that they afterwards did in some other business, but not in that matter.

Q. Who were the counsel for Willard & Company and Heath & Company? A. I was for Willard & Co.

Q. Who were for Heath A Co.? A. I don't know that they had any.

Q. How did it happen that on Oct. 8 an order was made providing for the payment of large sums to Heath & Co., although they had had no counsel at the time? A. I do not know; I say that they had not. Martin & Smith certainly appeared for the Bank, and they had frequent consultations, I suppose, with the Receiver's counsel, as such; then they and the Receiver, Mr. Jourdan, all turned up together at the Erie Railway office; they had this plan made and submitted it to me; the proposition did not come from me, or, so far as I know, from my clients; they made this proposition and presented it to me.

Q. You have not mentioned Frederick A. Lane as having been present on any of these occasions. Had he been up there. A. He was present on some of these occasions; I don't remember how many.

Q. Don't you remember that Messrs. Fisk & Gould telegraphed to the Pine street office of Field & Shearman, prior to the substitution in their place of Barretts & Redfield, that they had made an arrangement substantially such as was carried out by the order of October 9, 1869? A. I don't know whether that was so or not.

Q. Were you not in a position where you should know if such an event had occurred? A. I don't know; I presume I was in town.

Q. Do you mean that when you had prepared all these papers

they could have made these settlements, and have telegraphed them to your office without your knowledge? A. Yes.

Q. Did they communicate to you the fact, without regard to the telegraphing, that they had made this arrangement? A. Never; all these parties came in, and after holding a council among themselves, several came to me and told me that this arrangement had been made, and the Bank would consent to make these payments, etc., if there could be a Receiver in the place of Mr. Brown, and I think now I can explain the other matter. I think, from recollection, Martin & Smith were general counsel for Heath & Co., and being also counsel for the Bank, arranged this matter between them and Heath & Co.

Q. Who else obtained a Receiver for the Gold Exchange Bank? A. Robert Baile.

Q. When did he obtain the order? A. On the fourth or fifth day of October.

Q Through whom? A. Through Barretts & Redfield; I am answering without knowledge of the facts.

Q. Have you any knowledge that anybody obtained a Receivership of the Gold Exchange Bank except the three parties for whom Field & Shearman acted? A. I have no personal knowledge.

Q. Who appointed the Receiver, so far as you heard in the Baile suit? A. Judge Cardozo.

Q. Had not Mr. Amasa A. Redfield of the firm of Barretts & Redfield, been acting a long time prior to this as counsel for the Erie Railway Co.? A. Mr. Redfield had acted in some matters which were matters of the Erie Railway Co., as counsel for me; that is the only sense in which he was counsel for the Erie Railway Co.

Q. And during what length of time prior to October, 1869? A. I think I am wrong in saying that he had before that time. I don't think he had. I was thinking of matters whch took place in 1870. I don't think that Mr. Redfield had anything to do with the affairs of that Company before that time. He was, of course, one of the counsel for the Albany and Susquehanna Railroad Co., and engaged by that organization which was friendly to our firm.

Q. Had he not been acting in that matter prior to this litigation? A. Yes, he attended to some little matters for my accommodation.

Q. How long was he engaged? A. Perhaps some two different occasions.

Q. You have spoken of clerks at the office of the Erie Railway Company, Eighth avenue and Twenty-third street, who assisted in the preparation of these papers; can you name such clerks? A. The only ones I can name, from positive recollection as being there, were Edward Ensign and Octave Wittaker.

Q. Were there others? A. I am inclined to think there were, but can't remember.

Q. Were they or any of them clerks of the Erie Railway Company? A. Octave Whittaker was, but no other.

Q. Do you mean to state, Mr. Shearman, that Mr. Morgan ever said to you that he had been retained as counsel for the Gold Exchange Bank? A. Yes.

Q. Where did he make the statement? A. For the first time when we were coming over in the carriage from Brooklyn.

Q. Did he act as counsel for the Bank when you reached the bank on Sunday night? A. He went down expecting so to act, but he found they had Martin & Smith there, and from that day I think Martin & Smith suspended him. That is mere impression.

Q. Was not Frederick A. Lane at the time a Director of the Erie Railway Company? A. He was.

Q. Was not Mr. William M. Tweed at that time a Director of the Erie Railway Company? A. He was.

Q. Was not Mr. Peter B. Sweeney at that time also a Director of the Company? A. I think he was. I think he ceased to be in October, 1869, and this was the latter part of September, so I think he was.

Q. When was it that Mr. David Dudley Field expressed the doubt whether the fees directed to be paid by the Receiver were not too lage? A. On the 8th October.

Q. Was it not on the 8th October, prior to the order of the 9th October, which fixed those fees? A. Yes.

Q. Do you mean, then, that before Judge Cardozo had made the order fixing those fees they had been put in the order to be obtained from him, and at so large a price that even the plaintiff's counsel objected? A. They were settled upon between the parties.

Q. Without ascertaing whether Judge Cardozo would order them or not? A. Yes.

Q. And at an amount which Mr. Fieid thought too large? A. Mr. Field said it was not satisfactory.

Q. This $20,000 to Mr. Brown and his partner was in compensation for services running through eleven days, was it not? A. Yes; I think it was.

Q. What do you think of the propriety of this payment of $20,000 for services running through eleven days? A. As compared with the other charges I have known to be made by the most respectable lawyers of this city, and sanctioned by the most respectable Judges, I think the amount very moderate, and at the time I differed from Mr. Field.

Q. Then you consider the amount too small? A. I think lawyers ought to do things in moderation, and I think the amount fixed upon was about right.

Q. What, in your judgment, would be a fair amount without the exercise of any moderation whatever?

(Objected to by Chairman of Committee. Objection withdrawn).

By Mr. NILES:

Q. What legal services, to your knowledge, did the Receiver require during these nine or ten working days? A. None, to my knowledge; I presume he retained counsel.

Q. But you don't know that there had been any occasion for the Receiver to retain counsel? A. I know enough of Receiverships to know that if he is a wise man he will, immediately upon his appointment, retain counsel.

Q Do you know of any occasion which arose during these nine or ten business days which demanded any special attention? A. I don't know of anything peculiar to that case.

Q. Do you regard $5,000 as fair, when in truth and in fact the counsel had done nothing? A. Yes; if he had anything to do.

Q. But on the assumption that he did nothing? A. No, sir.

Q. Was Mr. Vanderpoel not in consultation with you after he obtained the Osborne order about these suits? A. Not until the arrangemet was made.

Q. You did not see him during that interval? A. I am not positive, but think not.

Q. He was in the Erie office? A. I think not.

Q. Who were your clients who would not give time for Mr. D. D. Field to investigate about this settlement? A. The clients were Osborne, Lloyd and Carver.

Q. Do you mean that Osborne, Lloyd and Carver objected to giving the time necessary to enable Mr. Field to make this investigation? A. I can't say they did.

Q. Who were the persons who did? A. I can't say any persons whatever.

Q. Were not the persons Mr. Fisk and Mr. Gould? A. No, sir; Mr. Fisk never interfered with it at all, and Gould, I don't think came near the office.

Q. Then you mean to say that neither Gould nor Fisk did press, and so prevent your obtaining the time that Mr. D. D. Field aided to make his investigation?

Q. Who were the counsel for the Bank, who you say pressed the settlement? A. Mr. Martin, and perhaps Judge Emott; I remember Martin doing so.

Q. You say that you had an impression that Judge Cardozo did not like you. What was your opinion of his feelings towards Judge Vanderpoel? A. I think were friendly.

Q. Do you consider that they were intimate? A. don't know about their being intimate, but thought they were good friends.

Q. Will you look at the copy injunction order, now shown you, and state whether it is not a copy coming from your office, of an injunction order obtained by your firm from Judge Cardozo, in the suit in the Supreme Court, of Henry M. Smith and others, against Wm. H. Neilson, as President of the New York Stock Exchange and others? A. I think this copy came from our office, but I did not obtain it.

(Paper marked for identification, February 26th, 1872, L. B. P.)

Q. If a check for the full amount of the claim of Osborne against the Gold Exchange Bank, was given Osborne on September 27th and paid by the Gold Exchange Bank on the 28th September, in the regular course of its business, would you have any doubt that Osborne had ceased to be a creditor of the Bank prior to the commencement of his suit? A. To that extent I would not.

Q. What did Osborne say was the nature of the indebtedness mentioned in his complaint? A. I can't recollect now.

Q. When did you draft the complaint in the Willard suit? A. I presume on the 29th September, 1869.

Q. At what hour of the day? A. It must have been in the afternoon.

Q. Where? A. I can't positively say whether it was at my down town office or at my office in the Erie Railway building.

Q. Where was it printed? A. I think at the Erie Railway printing office; but I am not sure.

Q. Will you state your best recollection of the time you first heard that Judge Cardozo had given the order for a Receiver of the Gold Exchange Bank? A. I think I heard of it in some way about eleven o'clock on the same morning.

Q. From whom? A. I can't tell.

Q. What was the affidavit of Edward Ensign on filing which the order of October 9, 1869, was made by Judge Cardozo? A. I don't know.

By Mr. NILES:

Q. Had you, prior to September 29, 1869, heard that any question was being raised about the conduct of Judge Barnard in connection with the Erie Railway matters? A. Yes, sir.

Q. Did Judge Barnard's name come up in this discussion between you and Mr. Vanderpoel in reference to who should give this order? A. Yes, sir.

Q. What was said in regard to that? A. I said, in the first place, that Judge Clerke was the proper Judge anyway, and that I would not apply to any other; and then, in the next place, I said instantly, that in any case, if Judge Barnard should be in Court and Judge Clerke should not, I would wait; I thought it would not be wise to take any order from Judge Barnard.

Q. Prior to that time, had you heard any talk about what was called the "Tammany Ring," in this city. A. Yes.

Q. Did you understand that common rumor made Messrs. Tweed, Connolly, Sweeny and Hall, members prominent in that ring? A. Well, at that time, the fact is I had comparatively very little acquaintance with it; I did not know that Mr. Hall was considered as forming one of that so called ring.

Q. Had you heard those four names mentioned as the names of those composing the ring? A. Never heard Mr. Hall mentioned as one; I heard fifty people spoken of as being in the ring; but not Mr. Hall more prominently than perhaps a dozen others.

Q. Did you hear his name mentioned as being in the ring? A. As associated with it; yes, sir.

Q. You knew Mr. Hall was the partner of Mr. Vanderpoel? A. Yes, sir.

Q. Had you heard, by common rumor, that the Tammany Hall Ring was influencing the administration of justice in this city? A. I had seen it so stated in the newspapers.

Q. Had you heard that the retainers of Brown, Hall & Vanderpoel, were very largely increased on account of the supposed influence of the Tammany Hall Ring? A. No; I don't think at the time I had heard so; I have since heard of it

Q. You mean to say that up to that time you had no idea that anybody ever retained that firm on the supposition that they had influence with the ruling powers? A. No, sir; I think I have heard no isolated cases, nothing but a rumor of that kind.

Q. Did you at that time know that that firm were the legitimate counsel for nearly all the departments of the city government? A. I knew that they were for the Police Department, and for the Sheriff's office; I did not know that they were for any other, and I don't think they were then.

Q. Did you ever hear at that time that they had any peculiar influence over Judge Sutherland or Judge Clerke on account of their relation to politics? A. No, sir.

Q. Had you, up to that time, heard from any source that many people believed that they had a special and peculiar influence over Judges Barnard and Cardozo, in consequence of their connection with the ruling powers? A. Yes, sir; I had heard something of that kind generally coupled with the rumor I had heard myself.

Q. When was Mr. D. D. Field first retained as counsel for the Erie Railway Company? A. October, 1867.

Q. Do you know whether just prior to that time Mr. Field had publicly announced his purpose to secure the impeachment of Judge Barnard? A. No, sir.

Q. Did you ever hear of that? A. No, sir.

Q. The complaint in the case of Henry N Smith, and others, against Townsend Cox and others, was drawn, and the injunction in that case obtained prior to the preparation of the com-

plaint in the case of Palmer *agst.* Townsend Cox, and others? A. Yes, sir.

Q. Do you know whose name has been erased from the list of defendants, in the Palmer case? A. I think James B. Colgate.

Q. Is it true or not, that James B. Colgate and Wm. M. Vermilyea were parties who were threatening to cause the expulsion of Gould and Martin, or the members of their firm from the Gold Exchange, for neglecting and refusing to perform their contracts at that time? A. I can't recollect.

Q. Do you recollect having seen that stated in the papers? A. I don't recollect.

Q. And was that quarrel talked over in those interviews you had prior to these actions? A. No, sir.

Q. You have testified in regard to a committee—will you state what words are erased from the 11th section in this second complaint, (Exhibit N, February 20th)? A. The words "and of this committee" stricken out.

Q. Had you, after having drawn the complaint, (Exhibit N), been informed that it was not true; or why were these words put in the first and stricken out of this? A. I can't recollect, but I suppose that different information had been received.

Q. You had learned that there was no threat to throw out anything that was just? A. My impression is, that between these two complaints, the committee was reported to have changed its mind.

Q. State what words are erased from section 12, (Exhibit 12)? A. "Enforce the decision of the said committee."

Q. Why was that in substance in Ex. M, written in and afterwards erased from Ex. N.? A. The rumors that came about the action of the Gold Exchange varied from time to time; about half a dozen times a day; and in addition to that the Gold Exchange itself; there its decision, so that not only some reports were incorrect, but, nevertheless, some of the reports which were correct showed the unsettled state of mind existing in the Gold Exchange itself, and I suppose this was drawn under a mistaken impression.

Q. In Ex. A, what are the words interlined in section 12? A. The words "on a different plan from that prescribed by said Board."

Q. Is that the only specification in Ex. N, in regard to purposes to vary from the rules of the Exchange?

A. No; it states how the Association of the Gold Exchange proposes to act through the appointment of a committee, something not originally contemplated in their Association; those are the only words, the rest is explanatory, to bring things up to that point.

Q. I see in section 3, Exhibit N, that the duty of making such an adjustment cannot lawfully be devolved upon any person,

other than one agreed upon by all the parties, do you understand that to include a Receiver, appointed without the knowledge of a majority of the parties? A. I did, because I understood the Receiver to have all the rights of the Bank.

Q. Section 9, states "the members of the said association have appointed a committee to make such adjustment and clearance." Did you ever understand either then or afterwards that that committee was appointed at a regular meeting of the Gold Exchange at the Gold Exchange Rooms? A. Well I never was informed whether the meeting was regular or not, but it was a meeting of the Exchange at its rooms.

By Mr. PARSONS:

Q. Explain how it is that, with your desire that the order of injunction and receivership in the Osborne suit should be made by Judge Clerke and not by Judge Cardozo, you were unwilling to wait until ten o'clock, when Judge Clerke should reach the Chambers, and yet have just stated that in your conversation with Mr. Vanderpoel you told him that you preferred to wait rather than apply to Judge Barnard? A. Mr. Vanderpoel thought that the Receiver should be appointed in time to file his bond, have it approved and go down to the Bank at ten o'clock to take possession. I knew of no objection to Judge Cardozo's granting the order, and of course in only one sense to Judge Cardozo. I only wished to avoid complaint, and in the second place, I thought Judge Barnard was not the regular Chamber Judge, and in the third place, I had rather have suffered damage than drag Judge Barnard in. I have always tried to keep the Judges out of trouble when there was no necessity. I have always abstained, when possible, from asking for any order which might involve the Court, even when I thought the order would be lawful.

Q. Is that the best explanation you can give? A. Yes sir.

By Mr. NILES:

Q. Had you ever heard any complaint against Judge Barnard's granting orders unless right, accompanied by a complaint that the orders thus granted, were unjust or partial? A. I have. It has been made the ground of attack upon us repeatedly that we applied to Judge Barnard for any order at all.

Q. With regard to any particular order, have you ever heard anybody complain of the Judge ever having granted unjust orders, or the ones they admitted to be just? A. Well, the persons who spoke against Judge Barnard were unwilling to admit that anything he did was just; but we ourselves had been attacked publicly because we applied to Judge Barnard for any orders, just or unjust.

By Mr. OWEN:

Q. You were asked by Mr. Parsons about the friendly rela-

tionship between Judge Cardozo and Aaron J. Vanderpoel. Can you state whether or not you employed Mr. Vanderpoel on this occasion to assist you in consequence of the friendly relationship which you supposed existed between him and Judge Cardozo? A. Not in the least. When I sent for him I supposed the order would be made by Judge Clerke; I supposed we should get through at a reasonable time of the night.

WILLIAM F. SHEPHERD, sworn and examined by Mr. PARSONS:

Q. How long have you been an attorney and counsellor-at-law? A. Ten or eleven years.

Q. Of what firm? A. Of Marsh & Wallis; been a partner over two years; some time before that I was in business for myself, and before that I was clerk for the predecessors of that firm, Marsh & Wallis.

Q. Did you act as attorney for Mrs. Annie E. Fields in a suit for divorce on the ground of adultery by her against Thomas C. Fields, her husband? A. I did; I was brought into the case after it had been commenced.

Q. Who acted with you as counsel in that case? A. If any one, the only counsel was Luther R. Marsh, who appeared upon two motions.

Q. Was there a reference to Charles A. Rapallo (now Judge to the Court of Appeals) to take evidence in that case? A. There was such a reference, before my connection with the case.

Q. Did he make a report? A. He made a report.

Q. Look at the papers now produced and state whether they constitute the original judgment roll in that suit? A. Yes, sir; that is the judgment record.

Q. What was the date of Judge Rapallo's report? A. The 25th of April, 1868.

Q. Is his report part of the judgment roll? A. It is.

Q. Was a motion for divorce, alimony and counsel fees made upon the coming in of Judge Rapallo's report? A. I noticed a motion after that report was made and handed to me. I was substituted in the place of Judge Whiting, who had been attorney for the plaintiff, and then I made a motion for judgment for divorce, which I understood was not disputed.

Q. When did the motion come on to be heard, and before whom? A. The motion was not called on until the 22d June, before Judge Ingraham.

Q. When was the motion heard? A. That day.

Q. And before Judge Ingraham? A. Yes, before Judge Ingraham.

Q. Subsequently was there any order made upon that motion? A. There was no order made upon my motion, nor was there any order made by Justice Ingraham. There was an order made in the case.

Q. Look at the order made by Judge George G. Barnard dated

July 2d, 1871, and state whether that is the order? A. That is the order in the case.

Q. Had any motion upon which that order was made been heard before Judge Barnard? A. None upon which I was heard.

Q. The order states that it is made, Luther R. Marsh and William P. Shephard appearing for the plaintiff, and John K. Hackett and Henry Parsons for defendant; was any such motion made before Judge Barnard by those counsel? A. That motion was not heard; there was a motion heard; there was one of the attorneys in the case on the other side served a notice of motion; Mr. Marsh and I appeared before Judge Barnard and objected to his deciding the case, or interfering with it in any way; that was the only time.

Q. Prior to that time, the case was heard before Judge Ingraham? A. Yes.

Q. Were the papers submitted on that hearing before Judge Ingraham? A. Yes.

Q. Were they the same papers upon which Judge Barnard made the order signed by him? A. I don't know what papers he made the order on; I don't know what he had.

Q. Are they the papers referred to in this order? A. That describes the papers handed to Judge Ingraham on the motion before him.

Q. Was there any motion ever made before Judge Barnard upon which these papers were read or submitted, and upon which the counsel I have named were present, or were heard in that suit? A. No, sir; no motion of which I heard.

Q. Was the decree assigned by Judge Barnard—the form of proposed decree served upon you? A. Yes, sir.

Q. With what notice was it served? A. A notice that I would be present.

Q. When? A. I think the 3d—I think on the afternoon of the 3d of July, 1868; it was served on the 3d July, 4 P. M.

Q. Returnable when? A. On the 6th, at ten o'clock at Chambers.

Q. Did you attend at Chambers, before Judge Barnard, at ten o'clock on the morning of the 6th? A. Yes.

Q. What happened there? A. I attended there with Mr. Marsh, representing the plaintiff; the defendant was represented by Mr. Parsons; I do not think Recorder Hackett was there that morning; a little while afterwards Judge Barnard came into the Chambers. This case was suggested to him; it was not by us; Judge Barnard spoke of it, and Mr. Marsh, as I remember the question, asked whether he had decided to call the case. Mr. Marsh said he considered it proper that as Judge Ingraham had heard the case, he should decide it. There was quite a discussion, and Mr. Marsh urged the point very strongly. Judge Barnard said the matter seemed to be submitted as a sort

of *ex parte* proceeding. Mr. Marsh reviewed the facts, and said the matter should be decided by the Judge who had heard it. Finally, Judge Barnard said that we could leave the papers, and they would be submitted to Judge Ingraham, or we could come in the next day and see Judge Ingraham, at the same time, saying that he would not probably change his decision. We went up the next morning, but Judge Ingraham did not appear, nor did I see any one on the part of the defendant.

Q. What then ensued? A. I think the next step I took was to notice a motion on an affidavit of my own, asking to have this decision of Judge Barnard's vacated, or any judgment that might be entered afterwards, on account of his decision.

Q. Had Judge Barnard, prior to your noticing this motion, signed the decree? A. He had not signed the decree; he had made the decision I found on the back of the papers. I went up there on the 6th of July, the matter not having been published in the bulletin. I went up there and found this order, which surprised me considerably. The order appears as an endorsement on the papers in the following words: "Plaintiff is entitled to judgment. Allowance given to plaintiff's counsel, $100. No alimony. Either party may settle decree. G. G. B."

Q. Was that prior to your appearing before Judge Barnard on the 6th of July? A. Of course; it must have been; I had then no knowledge of it.

Q. Look at the decree in the judgment roll, and state whether that is the form of decree served upon you with the notice of settlement? A. Yes, sir; the decree I compared with the one that was served upon me, and I find it to be a copy with, I think, one exception.

Q. State what? Q. The exception is in the alteration of the allowance to the plaintiff's counsel from $100 to $300.

Q. When was that alteration made? A. That is more than I know, sir.

Q. Had it been made when the papers were left with Judge Barnard on the 6th of July? A. These papers were never in my possession; I didn't know what was in them, except that it is very apparent that this is an alteration.

Q. And was the same stated in the proposed order served upon you—$100 instead of $300? A. It was.

Q. And is the change in the handwriting of Judge Barnard with his initials in the margin? A. I should say that is Judge Barnard's handwriting.

Q. State now what happened on the motion that you made to vacate that decree. Before whom did the motion come on to be heard, and what took place? A. That motion came on before Judge Cardozo. I stated the case rather briefly. The case stated itself pretty much. I stated the fact that I had an affidavit of my own on which I founded it.

Q. Was that the only affidavit? A. I noticed this motion on

all the papers in the case, including this affidavit of my own, which states very fully all the proceedings before Justices Barnard and Ingraham. The motion was brought on all the papers in the case.

Q. Were there answering affidavits on that motion? A. There was a short affidavit of Mr. Parsons, who represented the defendant on that motion—Mr. Henry Parsons.

Q. Was the motion submitted to Judge Cardozo and all the papers in the case? A. We handed him the papers used before Judge Ingraham and this affidavit.

Q. Did Judge Cardozo subsequently make a decision? A. Yes, sir.

Q. Look at these papers, produced from the County Clerk's office, and state whether they comprise your own affidavit and the affidavit made by Mr. Parsons, with the order which Judge Cardozo made? A. Yes, sir; these are the papers.

Q. Did Judge Cardozo write an opinion upon it? A. He wrote a short opinion.

Q. Have you a copy of it? A. I have the original.

(Opinion read in evidence, as follows):

"I think the order signed by Judge Barnard was irregular, "because it was not properly *ex parte*. It was the continuation "of the matter partly heard by Judge Ingraham. For the irreg- "ularity the plaintiff would be entitled to have an order setting "it aside; but on the merits, I think the order substantially "right; the defendant has no means except his public office, the "tenure of which is too unstable to make the basis of an allow- "ance. It is true that, as a general rule, the order should be "made requiring some payment by the husband to his wife "when divorced, for his guilt; but in this case it has been "shown that the husband has nothing, while his wife has "abundant means. This case is not, therefore, within the gen- "eral rule. The allowance was not complained of. (Signed) "A. C., J. S. C."

Q. How long prior to that time did you know, or know of, Thomas C. Fields? A. By sight and by reputation for a long time.

Q. You had no personal acquaintance? A. No, sir.

Q. Was he a prominent politician of this city? A. I believe he was.

Q. Was that his reputation? A. Yes.

Q. Do you know whether he held any public office? A. He swore in this case that he was Corporation Attorney.

Q. Do you know where was his office? A. In Nassau street. At this time his offices were at 115 or 117 Nassau street, I think.

Q. Do you know who was his associate? A. No, I do not.

Q. Do you know whether Mr. Gratz Nathan was occupying offices with Mr. Fields at the time? A. I do not.

Q. Did you subsequently take an appeal from the order denying the motion in this action to vacate the decision of Judge Barnard, and from the decree of Judge Barnard? A. I waited until Judge Cardozo had made his decision on the motion before entering up my judgment. Of course, if the decision was to be vacated, Judge Barnard's order did not want a judgment. When Judge Cardozo denied the motion to vacate I then entered up my judgment. I also entered up the order on the motion heard before Judge Cardozo, and immediately appealed to the General Term, both from the order and from the decree, so far as the decree denied alimony.

Q. What was the result of that appeal, if any, with reference to any payment to Mrs. Annie E. Field? A. It remained on the Calendar some time, and was then settled by the defendant paying $10,000, in a gross sum.

Q. Look at that printed copy now shown you, and state whether it is a case prepared for the purpose of the appeal of which you have spoken, and whether it contains the papers upon which was made the decree by Judge Barnard, the papers upon which was made the motion by Judge Cardozo; his order upon that motion with the notice of appeal; of all these papers? A. This contains a copy of those papers, and of all the papers. (Marked charge 4 A.)

Q. What was the real point of discussion before Judge Cardozo on that motion? A. I don't think there was much discussion. The only thing discussed, if discussed at all, was the propriety of Judge Barnard's making this order. I think it resolved itself, before Judge Cardozo, into the mere statement of facts, as I understood them.

Q. Was not the discussion as to whether the decree should be amended, as far as alimony was concerned? A. I don't remember anything of that character before Judge Cardozo.

Q. Did the other side say anything upon that subject? A. No.

Q. Don't you recollect the remarks, after the motion was brought up, upon that subject? A. No; I think the whole matter before Judge Cardozo was very short. I stated the case, Mr. Parsons said very little, and we handed the papers to the Judge.

By Mr. NILES:

Q. You mean to say the only question you called the Judge's attention to was the irregularity of the order? A. I don't recollect calling his attention to anything. I think my motion asked for the vacating of the order, and re-hearing of the case on the merits.

Q. Was not it done? A. I don't think there was any argument on that subject.

Q. Was there any announcement during the argument as to whether or not it would be re-heard on the merits? A. I have not the slightest recollection of any such announcement.

Q. Was there any announcement by the Judge as to whether or not he would re-open the case, after the hearing, on the merits? A. No, sir; no decision at that time, or intimation of such decision.

By Mr. OWEN:

Q. Did you read the notice at the opening of the case? A. I don't remember.

Q. You did, didn't you? A. My impression is I stated it.

Q. If you stated it, you stated the substance? A. Yes, sir.

Q. You did not state to the Court, on that motion, that you did not mean to bring the motion as an attorney? A. No, sir.

Q. And these papers were all handed to Judge Cardozo? A. Yes, sir.

Q. I suppose you think Judge Cardozo's opinion was wrong? A. I appealed to the General Term.

Q. Had you any other complaint to make, except that? A. I think Judge Cardozo's opinion ought to have been reviewed, that is all.

Q. Has your firm, or any one connected with it, been in the habit of getting orders out of Court, in cases of emergency? A. Yes, sir, certainly.

Q. Sometimes send to the Judge's house for an order? A. Yes, sir.

Q. Sometimes to Judge Cardozo's house? A. Yes, sir.

Q. Always found him ready to do work? A. Never was refused, and never asked for an order that was not perfectly proper.

Q. Still you say you had sent to Judge Cardozo's house for orders? A. Yes, sir; not frequently.

Q. You always found Judge Cardozo there and ready for work? A. As far as I know; I never went personally.

By Mr. PARSONS:

Q. Have you, or any one of your firm, ever applied to Judge Cardozo for an order for which you had an opportunity to make the application to the Judge sitting at Chambers? A. I have no recollection of ever doing so.

Q. Have you done so with any Judge, sent to obtain an order where you had an opportunity to apply to the regular Judge sitting at Chambers? A. I have no recollection of such an instance.

Charge Two of improper discharges on Habeas Corpus:

By Mr. STICKNEY:

We propose to put in, under the second charge, a number of writs of Habeas Corpus, which were made returnable by, and were

returned to Judge Cardozo upon the same kind of commitments (the attorneys not being Howe & Hummel), where the prisoners were remanded.

Herman Weissensee: "The within writ discharged A. C., J. S. C." Date of the commitment, January 5th, 1871. Offence, petty larceny. Sentence, three months; Counsel, Hirsch & Newcomb. Before Judges Dowling and Shandley; date of discharge does not appear. Writ discharged and prisoner remanded.

Herman Cargens: "Writ dismissed and prisoner remanded, A. C., J. S. C.;" without giving the date. The commitment 7th March, 1871; offence, petty larceny, without giving the date. Justice present, Joseph Dowling.

James Stanton: "Writ dismissed and prisoner remanded, April 27th, 1871, A. C., J. S. C." Date of commitment, 20th May, 1871; offence, petty larceny; sentence, one month; attorney, S. B. Bragan; Justices Dowling and Shandley.

Joseph Roeth: the endorsement is, "writ dismissed and the prisoner remanded, A. C., J. S. C." And the date of the last adjournment on the writ is to "April 29th, 1871." Commitment, March 25th, 1871; offence, indecent exposure; sentence, six months; attorneys, Kinzing & McClelland; before Justices Shandley and Dowling.

Edward Clark: "Writ dismissed and prisoner remanded;" without date, but the last adjournment is to the 2d May, 1871; date of commitment, 2d February; offence, assault and battery; sentence, six months; attorneys, Kinzing & McClelland; present, Justice Dowling.

Peter McIntyre; Writ discharged and prisoner remanded, April 28th, 1871, Albert Cardozo; date of commitment, April 13th, 1871; offence, the sale of lottery tickets; sentence, one month; attorney, T. S. Smith; present, Justices Dowling and Shandley.

John Bourmann: Endorsement, writ discharged and prisoner remanded, A. C., J. S. C.; no date, but last adjournment of writ is May 1st, 1871; offence, keeping a disorderly house; sentence, three months, and a fine of $300; attorneys, Kinzing & McClelland; present, Justices Dowling and Shandley.

Ernest Schneider: Writ dismissed and prisoner remanded, A. C., J. S. C.; date of commitment, 21st June, 1870; offence, petty larceny; sentence, two months; attorney, Wm. F. Kinzing; present, Justice Shandley.

Edward King: Writ dismissed and prisoner remanded, July 6, 1871; offence, keeping burglarious implements, with intent to commit felony; sentence, seven months; attorney, Wm. F. Kinzing; present, Justice Shandley.

Joseph Silberstein: "Writ discharged and prisoner remanded; A. C., J. S. C.;" date of last adjournment, July 31, 1871; sentence, six months; offence, petty larceny; Lapaugh & Ames, attorneys; present, Justice Dowling.

John Hogan: "Writ dismissed and prisoner remanded; A. C., J. S. C.;" date of return being 20th July, 1871; offence, petty larceny; sentence, two months; attorney, W. L. Fowler; present, Justice Shandley.

Frederick Wilson: "Writ dismissed, prisoner remanded; October 3, 1871; A. C., Justice Supreme Court;" commitment, July 3, 1871; offence, assault with intent to steal as a pick-pocket; sentence, six months; attorney, Alanson Nash; present, Justice Shandley.

Conrad Mehling: Writ endorsed "writ dismissed; A. C., J. S. C.;" date of commitment, 5th January, 1871; return dated 12th January; offence, petty larceny; sentence, three months; attorneys, Hirsch & Newcomb; present, Justices Dowling and Shandley.

EDMUND M. PLUM, being duly sworn and examined by Mr. PARSONS, testified as follows:

Q. What official position do you hold under the Clerk of the city and county of New York? A. Clerk of Records.

Q. Have you been subpœnaed to produce all the recognizances from the County Clerk's office, filed upon the discharge of persons held upon Blackwell's Island after final conviction by the Court of Special Sessions? A. I have been subpœnaed to.

Q. And are there such papers? A. Forfeited recognizances there are. No others that I have knowledge of.

Q. How long have you held your present position? A. About three years.

Q. Have you, since you have been in the County Clerk's office, had charge of the recognizances taken upon the final discharge of prisoners from the Court of Special Sessions? A. I know of none.

Q. When the prisoner was discharged upon his own bail? A. No.

Q. Have you also been subpœnaed to produce any traverses filed upon the return to such writs of Habeas Corpus filed since January, 1868? A. I have been.

Q. Are there such traverses? A. Not that I can find.

Q. I refer to the return made by the Warden of Blackwell's Island; are there such? A. Not that I know of.

Q. Have you ever known of such papers? A. Not to my knowledge. I have not looked for any such papers.

Q. You have examined all the writs of Habeas Corpus, and find nothing but the petition? A. No, sir.

Q. Are these the only papers in the County Clerk's office, filed since 1868? A. These are the only papers I know anything about.

Q. Is it right to say that you have charge of all these papers? A. Yes, sir.

Q. All that came to the County Clerk's office are within your charge? A. Yes, sir.

Q. And you have made a search to see whether there are any other papers, except the petition for allowance of the writ, and find none? A. Yes, sir.

Q. And these papers which you have produced are petitions on the allowance of the writ? A. Yes.

Q. That is all? A. Yes.

Q. Have you also been subpœnaed to produce any papers in the matter of Annie C. Pearsall and Johanna Connor? A. Yes.

Q. Is there any paper in that proceeding on file in the County Clerk's office? A. I think no other but the petition.

Q. That is all? A. Yes, sir.

Q. Although you have looked carefully? A. Yes.

Q. And these are under your charge? A. Well, I can't say whether they are entirely or not.

Q. Who has charge of them? A. I think they are filed with Mr. Beamish, Clerk of the Chambers.

Q. What does he do with them? A. He files them.

Q. In the County Clerk's office? A. Yes.

Q. Did you find, in the matter of Annie C. Pearsall and Johanna Connor, any other papers than the petition and writ of Habeas Corpus? A. No, sir.

Adjourned to 7 o'clock, P. M.

The Committee met in evening session, Monday, February 26th, at 7 o'clock, P. M.

Counsel present, and Judge Albert Cardozo. Mr. Fullerton: I desire to call the attention of the Committee to the evidence of the fact that Judge Cardozo is charged with having discharged Timothy Collins and Wm. Edwards, convicted and sentenced for 12 months to the Penitentiary, for prize fighting; the writ has just fallen under my eye. I find that it is allowed by Judge Brady, returnable before the General Term, and it is endorsed "conviction reversed, prisoners discharged. G. G. B., Dec. 6th, 1871.

Mr. Owen:

That disproves the charge.

Mr. Parsons:

In that case the commitment was in May, 1871. The sentence 12 months, the fine $1,000; the writ of Habeas Corpus was allowed on November 17th, 1871, and the discharge is in these words: "conviction reversed, prisoner discharged. December 6th, 1871. G. G. Barnard."

By Mr. Niles:

Q. What time was that appeal taken?

By Mr. PARSONS:

A. It appears the sentence of conviction was on May 16th, and the discharge not until December 6th—seven months afterwards.

By Mr. NILES:

Q. That was carried to the General Term? A. It was.

Q. Discharged at the December Term? A. Yes, sir; the Habeas Corpus was issued returnable to the General Term.

FRANCIS M. BIXBY, sworn by the Chairman, examined by Mr. Parsons.

Mr. PARSONS:

I think we will put in now, as Exhibits, as the two forms of conviction which were used, and which differ. The Bar Association Committee put in the conviction and sentence in the case of Weisensee, where the statement is made, there were present at the Court of Special Sessions the Hon. Joseph Dowling and Edward Shandley.

(Offered in evidence and marked charge "II A.")

And also the sentence and commitment in the case of William Horan, where the recital is, that there were present at the Court of Special Sessions the Hon. Joseph Dowling, Police Justice, elected in the 2d Judicial District, the Justice elected in the 5th district, also designated as aforesaid, being absent through disability.

(Marked "charge II B.")

By JUDGE FULLERTON:

I would make a statement of this fact, that the record of conviction is in printed form, and the names of the Justices are printed in every case where the statement is that the two sat, and where the statement is that one sat, that name is printed in a blank.

By Mr. PARSONS:

Q. Mr. Bixby, you were subpœnaed here to produce certain check books; have you brought them? A. Yes, sir.

Q. The check-books commencing when? A. I think commencing in 1871 or 1870. I have them all here.

Q. Will you produce them here, if you please?

By Mr. OWEN:

Q. Will you state what charge you are on now?

By Mr. PARSONS:

A. The Mercantile Insurance Company case.

Q. Won't you state what check-books you have produced beginning at the beginning, and in what bank? A. I will state

that my first Receivership was the British Commercial Insurance Company. I kept no bank account, and deposited the money in the United States Trust Company and took certificates. My next Receivership was the Great Western Life Insurance Company. These are the check-books of the Receivership of the Great Western Life Insurance Company.

Q. Won't you state the bank in which these accounts were kept, and the date on which it commences, and when it ends, and designate, at the same time, the Receivership in which that account was kept? A. This first account is in the Chatham National bank.

Q. When did the account commence? A. It commences the 19th of December, 1870.

Q. When does it end? A. Not ended yet.

Q. In what Receivership is that bank account kept? A. The Great Western.

Q. Is that the only bank in which it was kept? A. No, sir; I only kept it there a short time; then up at the Irving Bank; and during a portion of the time kept it at the Union Square National.

Q. Between what dates in the Irving National Bank? A. I keep it there now.

Q. Commencing when? A. I won't be positive; I think I went up to the Union Square Bank, after the Chatham Bank.

Q. Have you got the book in which you kept the account in the Union Square; and when does the account commence and end in that? A. I think it commences in March, 1871.

Q. When did it end? A. When that bursted, two or three months ago.

Q. In how many books was that account kept? A. Through four books. I did keep an account at the Irving Bank from January 1st, 1871, up to March 15th.

Q. Are all the books which you have now enumerated, books showing your checks and deposits in the Receivership of the Great Western Insurance Company, books in the Chatham, National and Union Square? A. Yes, sir.

Q. Are there any other check books of that account in any bank? A. No, sir.

Q. What other books have you produced on the subpœna that was served on you? A. I have the check books in the Beekman Fire Insurance Company Receivership, one in the Union Square, and one in the Irving Bank.

Q. When does the one in the Union Square commence, and when does it terminate? A. The first check I drew on the 10th of November, 1871.

Q. When does it terminate? A. The 15th of December.

Q. That was in the Union Square? A. Yes, sir.

Q. When was the account in the Irving National Bank commenced and terminated—the account of the Beekman Fire In-

surance Company? A. I drew the amount out on the 15th of December, 1871.

Q. What other books have you produced on the subpœna? A. I have the books of the Astor Fire Insurance Company Receivership, commencing on the 10th of November, 1871, and terminating on the 15th of December, 1871, in the Union Square National Bank.

Q. What other book have you? A. I have the petty cash book of the Astor Fire Insurance Company. I did not deposit very much money. They also had an account in the Chatham Bank. I have another book, George W. White & Co. I was appointed Receiver of that concern on the 28th of April, 1870.

Q. Have you now stated all the books for which the subpœna was served upon you? A. Yes, sir.

Q. Did you not, during the periods mentioned, keep an individual check book? My firm account is kept in my individual name. We have two warehouses. The business of one store is kept in my name, and the other in my brother's name.

Q. In what bank was kept the money which you drew for your own personal use? A. In the Irving and Union Square.

Q. In what name was the account kept? A. In my individual name.

Q. Have you produced those books—the books containing those accounts? A. No, sir.

Q. Why not? A. Because I was not summoned to.

Q. Are you sure of that? A. I am.

Q. Have you the subpœna here? A. Yes, sir.

Q. Does not the subpœna call upon you to produce all your cash books, check books, bank books, and all books showing your Receivership accounts from the 1st of January, 1868, to the present time? Q. Yes, sir.

Q. Have you produced all cash books, bank books, check books and ledgers, from the 1st of January to the present time? A. No, sir; I have got all the ledgers with regard to the British Commercial Life Insurance Company.

Q. I am asking you for account books showing your Receivership and all other books—cash books, check books, bank books and other books? A. I am willing to bring all the books.

Q. You have, then, other check books? A. My firm have other books.

Q. Any cash books of your own transactions? A. My individual transactions are embodied in them to some extent. In regard to the cash book of the British Commercial Life Insurance Company, I could not find it. That Receivership was closed a year or two ago, and the English agents here took some of the books, and some of them were sent up to my warehouse. I have got an abstract prepared to file away with my papers. I wished to refresh my memory about them, and also have the decree filed in the case.

Q. How long have you been acquainted with Judge Cardozo? A. I have known him very well for the last eight or ten years.

Q. Were you acquainted with him prior to his becoming a Judge? A. I knew him slightly.

Q. Had you not a personal acquaintance? A. A bowing acquaintance.

Q. Through whom did you become acquainted with him? A. Colonel Baldwin, who is an intimate friend.

Q. From that time have you been in the habit of visiting him at his house? A. Yes, sir.

Q. Frequently? A. No, sir.

Q. How frequently? A. Sometimes once a week, or once a month.

Q. Does he visit at your house? A. He is not much of a visitor.

Q. When were you first appointed by him Receiver? A. 1868.

Q. In what suit? A. I think it was somebody against Allen & Beach.

Q. Who was your counsel in that Receivership? A. Alexander Spaulding, present Judge of the Marine Court.

Q. When were you first appointed by Judge Cardozo, Receiver in a case where Mr. Nathan became your counsel? A. I think in the very next case—shortly afterwards.

Q. What case was that? A. It was the case against Catharine or Mary Ann Henry; the property involved was a tenement house; I employed Mr. Nathan in that case.

Q. When was the appointment of you as Receiver made? A. I have no recollection about it; it was 1868, I think.

Q. Prior to that time, were you acquainted with Mr. Nathan? A. Yes, sir.

Q. When did you become acquainted with him? A. Five or six years I knew him; had a bowing acquaintance.

Q. When did you become intimately acquainted with him? A. I went to him with one of these Receiverships in 1869.

Q. Was that the first? A. The first time, I think, I went to his office.

Q. Had you seen him at Judge Cardozo's house at that time? A. No, sir.

Q. Where had you met him prior to that time? A. In the hotels and streets.

Q. How happened you to employ Mr. Nathan as your counsel in that matter? A. I thought he was a very smart young man.

Q. Did you know he was a nephew of Judge Cardozo's wife? A. No, sir.

Q. Did you hear Judge Cardozo speak of him prior to that time? A. Not especially.

Q. How many Receiverships has Judge Cardozo given you from that time? A. From 1870?

Q. From the beginning. A. He gave me two in 1868, three in 1869; since then he has given me five or six cases, some of considerable importance, and fifteen or twenty had none whatever.

Q. Has Mr. Nathan been your counsel in every case? A. No, sir.

Q. Who else has been your counsel in any case? A. I employed Mr. Spaulding in the first case; that is the White case.

Q. With that exception who has been you counsel in all other cases? A. Mr. Nathan.

Q. Do you remember the case of the Mercantile Fire Insurance Co.? A. I saw an account of it in the paper.

Q. State all that you know with reference to the commencement of the proceeding which resulted in the appointment of a Receiver in that case? A. I had nothing to do with the matter at all. I think I went on the Receiver's bond.

Q. When did you first learn of the intention to apply for a Receivership in that case? A. I did not know anything of it at all until I was called upon to sign the bond.

Q. Did you not suggest to Judge Cardozo the appointment of a Receiver in that suit? A. No, sir. General Rogers was a juror in the Foster case, and was a good deal pleased with Judge Cardozo's management in that case. I spoke to Judge Cardozo about what he said, and further suggested that some time when he had the opportunity that he would give him a Receivership, and some time afterwards he appointed him the temporary Receiver of that Company.

Q. How shortly was that after the conversation? A. Right after the Foster case.

Q. Did you know of any intention at that time to put any of of the Insurance Companies into the hands of Receivers? A. I knew that there was an intention to put the Beekman and the Astor.

Q. Before the application to Judge Cardozo? A. I was asked if I would take a Receivership.

Q. Who asked you? A. I think Mr. Nathan with regard to the Beekman; my impression is Mr. Isaac Phillips with regard to the Astor, and Mr. Charles H. Hunt.

Q. Did you have anything to do with the purchase of the stock upon which either of those Companies, the Astor or the Beekman, was put into the hands of a Receiver? Did you hear of any intention to buy the stock as the basis of such a proceeding? A. Certainly.

Q. From whom? A. From Mr. Nathan.

Q. Did you see Judge Cardozo on the subject? A. No, sir.

Q. Not at all? A. No, sir.

Q. Did you see Judge Cardozo about that time? A. Possibly.

Q. Was there any talk with Judge Cardozo about either Receivership? A. No, sir.

Q. Will you state so positively? A. Very.

Q. When did you learn that Mr. Rogers had been appointed Receiver of the Mercantile Fire Insurance Company? A. I think it was the time when he called upon me to sign his bond.

Q. What day was that? A. The day he was appointed Receiver.

Q. How long before the bond was signed? A. I think right after he was appointed.

Q. Can you state here the hour of the day? A. No, sir.

Q. In the day time or night? A. The day time.

Q. Had Mr. Rogers then seen Mr. Nathan? A. I don't know, sir.

Q. Was Mr. Rogers acquainted with him at that time? A. Yes, sir.

Q. Very well acquainted at the time the order was made? A. Yes sir.

Q. Was it not you who after Rogers was appointed Receiver and before the bond was given, suggested to him to call upon Mr. Nathan? A. No, sir.

Q. That you will state positively? A. Yes, sir.

Q. If Mr. Nathan should state otherwise, would you think he is mistaken? (No answer.)

Q. Do you know E. D. Benedict, or B. F. Rice, or W. H. L. Owens? A. No, sir.

Q. Can you state the amounts allowed by Judge Cardozo to you as Receiver in the Receivership ordered to you by him? A. I cannot give you the amounts in each individual case; there was three or four in 1868, for which I received $250. I got next year about $1,000.

Q. What was the next year? A. 1869.

Q. In 1869 all that you received was less than $1,000? A. Yes, sir; in 1869 I was appointed Receiver of the British Commercial Life Insurance Company, which was settled in 1870.

Q. I desire to know the gross amount received in that case by order of Judge Cardozo as fees? A. The fees were fixed by stipulation, and that with the understanding of the Board and myself that I should pay Mr. Roderin and Mr. Bristed, the former agents of the British Commercial and the other agent sent out. I agreed with Mr. Lee to pay them $5,000, which I did, and I received $12,107 less this $5,000.

Q. What was the amount of money that passed through your hands? A. $242,140 $\frac{29}{100}$.

Q. You received five per cent. on the whole amount? A. No, sir.

Q. The amount you received was about five per cent? A. The amount we all received together.

Q. It was ordered to you by order of Judge Cardozo? A. Yes, sir.

Q. I would like to know how much Mr. Nathan was ordered as your attorney in that case? A. $5,000.

Q. When? A. About the time we settled it.

Q. It was shortly after order, the 24th day of May, 1870? A. Yes, sir.

Q. Did that money really go through your hands; was it not money largely in the hands of the Superintendent of the Insurance Department? A. Yes, sir.

Q. How much went through your hands, was received by you from every source? A. I received $221,180$\frac{12}{100}$.

By Mr. NILES:

Q. The total you received from all other sources? A. Yes, sir.

By Mr. PARSONS:

Q. Did the receipt of that sum change the opinion that you have expressed as to the profits of Receiverships? A. Yes, sir; I think it did.

Q. State the next fee as Receiver which was ordered to you by Judge Cardozo? A. I don't think I received anything that amounted to more than $100 or $200 until the appointment as Receiver in the Great Western Life Insurance Company.

Q. How much did you receive in that suit? A. Have not received a cent.

Q. How much is the amount that has come into your hands? A. There was $100,000 in the Insurance Department, and probably $14,000 outside of that, and there was a large amount of assets in the shape of premium notes, $100,000 or $200,000 that can be used in the settlement of claims against this Company.

Q. Do you mean that you have now stated all the sums which have been obtained by you as Receiver's fees, where the Receiverships were ordered to you by Judge Cardozo? A. No, sir.

Q. What other amounts have you received? A. I have received in several small cases $100 and $200 in a case. I received in the case of the State against Kobbe & Corlies, $750. I was Receiver of the Hoffman House, and kept the Hotel there for some time. Mr. Bartlett, the opposing counsel, fixed my fees at $10,000 in that case. I think I contributed $4,000 of that to General Mitchell. I gave another gentleman $2,000.

Q. When was that? A. That was last Spring.

Q. How much did Mr. Nathan, as your counsel, receive in that suit? A. I think he received $3,000.

Q. Who was Mr. Bartlett? A. A lawyer.

Q. What is his first name? A. I don't know what it is—Willard or William.

Q. Is he the counsel for Mr. William M. Tweed? A. Yes, sir; Willard O. Bartlett.

Q. Have you now stated all the fees you have received under orders of Judge Cardozo, in cases in which you have been appointed Receiver by him? A. All that were of any considerable amount.

Q. All exceeding, for example, $250? A. I think so; I won't be positive.

Q. You have stated in the year 1869 you did not receive to exceed $1,000 for your fees as Receiver, when a Receivership was ordered to you by Judge Cardozo. Do you mean to state that as a fact? A. That is my best recollection.

Q. Have you forgotten the case of Hungerford *v.* Patton and others? A. Yes, sir; I had forgotten it.

Q. Were you not appointed Receiver in that case of $120,000 of Mariposa stock? A. Yes, sir.

Q. Was not a motion made to set aside that Receivership? A. Don't know.

Q. Did you not receive, on July 15th, 1869, for your fees as Receiver, $2,000, and Mr. Gratz Nathan, as your counsel, $500? A. I won't be positive about that case; there was a case in which Clark Bell was interested, and I think that was the case, and in that case whatever fees I got I divided with him.

Q. Did any property come into your possession in that suit? A. Don't recollect that it did.

Q. Don't you recollect that you never saw the property for which you were appointed Receiver? A. I have a clear idea I never did.

Q. Don't you also remember, notwithstanding, that Judge Cardozo ordered to you, against the opposition of counsel, $2,000 for your fees as Receiver, and $500 to Mr. Nathan as your counsel? A. I don't recollect that fact.

Q. Will you state it was not a fact? A. No.

Q. Will you state that there were not other fees ordered to you by Judge Cardozo during the period covered by the testimony you have given? A. I think without exception.

Q. Have you entries that will show the amounts received Receiverships? A. I never made entries of them.

Q. Have you the entry of the $5,000, the $2,000, and the ten thousand dollar cases? A. Have given you all the important ant cases.

Q. Will you state you have not forgotten any others? A. Not of considerable amounts.

Q. What do you call considerable amounts? A. $200 or $300. I was Receiver in the Corlen case, and received in that case, $314.

Q. Has there been money transactions between you and Judge Cardozo? A. Not a cent.

Q. Do you mean directly or indirectly? A. Either directly or indirectly.

Q. Have you not drawn checks on your bank, that in which you

kept your individual account, which have gone to Judge Cardozo? A. Not one cent.

Q. Will you permit an examination of your individual or firm check-books on that subject? A. Yes, sir.

By Mr. HILL:

Q. I understood you to say you had received, in this Hoffman House case, $10,000, and that your fees were arranged by the stipulation of the attorneys; did Judge Cardozo make an order at all in the premises? A. I think not; if he did, it was with the consent of the parties.

By Mr. FULLERTON:

Q. Who was with Mr. Bartlett in that case? A. Judge Porter and T. W. Cotterill.

Mr. FULLERTON:

Some of the gentlemen here don't know, probably, about the Hoffman House. It is one of the largest hotels in the city, and one of the most respectable. The controversy was between the partners with regard to the lease, and, on account of the controversy between the partners, it was necessary to have a Receiver to carry on the concern.

Q. How long did you carry on the hotel? A. I don't recollect when I was appointed, but it terminated in May of last year; it was but a few months.

Q. You had the whole responsibility of the house? A. Yes, sir.

Q. What was the income of the house; was the income of the house very considerable? A. Yes, sir; very large.

By Mr. NILES:

Q. What were the gross receipts in that time? A. I don't recollect; I sold the furniture for perhaps $100,000. The profits of the house were from $15,000 to $20,000 a month.

By Mr. FULLERTON:

Q. You sold the personal property? A. Yes, sir.

Q. For how much? A. For $90,000; I sold the furniture.

Q. What did you do after you were appointed? A. During the time I was Receiver, I was there night and day, and the hotel was under my direction. The parties were very belligerent I can only say with regard to that Receivership, as Judge Porter stated in Court, the management not only gave entire satisfaction, but went far to rob Receiverships of their usual odium.

Q. All agreed upon your compensation? A. Yes, sir.

Q. You stated that Messrs. Tracy, Talmadge & Lee consented to your fees in the British Commercial case, and that the decree in the case was entered by consent? A. Yes, sir.

Q. Who is this Mr. Tracy you speak of? A. William Tracy, a lawyer.

Q. And your fees were agreed upon in that case? A. Yes, sir.

Q. And entered by consent? A. Yes, sir; the understanding was, I should pay these moneys out to these two agents who had rendered some service, and there was a great deal of litigation in that case. I think Mr. Phillips and Mr. Hunt also consented in their case. In the Astor case it was Mr. Phillips who was the lawyer.

By Mr. NILES:

Q. In what case was Mr. Phillips counsel? A. The Astor Fire Insurance Company.

Q. Were your fees agreed upon in that case? A. Yes, sir.

By Mr. FLAMMER:

Q. What were your fees in the Beekman Fire Insurance Company case A. That Company has not been settled yet.

Q. Have you received any fees in that case? A. Yes, sir.

Q. How much? A. I think between $5,000 and $6,000; that is my share of them.

Q. How long have you been Receiver of the Company? A. I have been Receiver a year. The agreement was that the Company was to be reorganized as the Safeguard Fire Insurance Co., and it has been organized since. They consented to have their offices together, and that these Companies should co-operate, and it was agreed with Mr. Fellows that Mr. Yereance should be appointed Receiver, if the Judge was willing to do it, and I should aid him in the settlement of these affairs for convenience sake. We went to Court and made the settlement in open Court to that effect. I had examined that Company, and came to the conclusion that its affairs were not unfairly administered. Mr. Fellows stated the facts which we wished to accomplish, and Judge Cardozo made the order, in which he directed the fees of the two Receivers should not exceed the sum which should be paid to one. He wanted a proceeding commenced by the Attorney-General, and the Corporation dissolved. They agreed to pay, and did pay to me, or rather I settled the matter, and paid Hunt and Phillips for themselves and for their clients I think $2,700. I paid Mr. Nathan $1,000, and I paid my clerks probably $300, and I received $9,000.

By Mr. FLAMMER:

Q. From this $9,000 you paid several amounts? A. I paid about $4,000.

Q. Are you Receiver of that Company? A. Yes, sir; Mr. Yereance is the Receiver, and I am to aid him.

Q. When were you appointed Receiver? A. Shortly after the Chicago fire in October, I think.

Q. Do you know what day in October? A. On the 31st of October.

By Mr. STICKNEY:

Q. The same day the bond was filed? A. I think so; it was about the 31st of October.

By Mr. FLAMMER:

Q. From what time was Mr. Yereance sole Receiver of that Company? A. I cannot tell. I don't know whether it was after the 1st of January; it was about the holidays.

Q. You don't know what time, do you? A. No, sir.

Q. Was Mr. Yereance appointed Receiver about the same time you were appointed and by Judge Brady? A. Yes, sir.

Q. About the same time you were appointed? A. Yes, sir.

Q. You acted from the 31st of October, 1871, till you don't know what day in December? A. I am still rendering services there to him.

By Mr. PARSONS:

Q. Why did you not state that nine thousand dollars among the fees which you had received as Receiver? A. I did.

Q. Did you state the amount of the fees you received in that case? A. I stated it.

Q. In that case, the case of the Astor Fire Insurance Company, did any money come into your hands? A. Some three or four hundred thousand dollars of Government coupon bonds, five-twenties.

Q. How long did they remain in your hands? A. As long as I was Receiver.

Q. In the Beekman case; did you receive a fee in that case? A. I did not; I am still Receiver in that case.

By Mr. NILES:

Q. What amount of money, if any, have you collected and paid out in the case of the Astor Insurance Company, leaving out of account the bonds which you took charge of? A. That is leaving Hamlet out of the play.

By Mr. PARSONS:

Q. Did you have to sell bonds to pay your fees? A. No, sir. I see entered eleven thousand seven hundred and forty-nine dollars and thirty cents. I received that money.

By Mr. FLAMMER:

Q. Upon what proceeding did Mr. Yereance become the sole Receiver? A. By my resignation.

Q. Did you have any information, at the time you resigned, as to Mr. Yereance's honesty and capability? A. I did not know him at all before.

By Mr. NILES:

Q. Where were these bonds kept? A. I had them in my possession, in my safe; in the safe Deposit Company.

By Mr. FLAMMER:

Q. When did you receive these nine thousand dollars; was it after Mr. Yereance was appointed Receiver, or shortly after you became Receiver? A. Shortly after Mr. Yereance became Receiver, when I settled up my accounts with the Company.

Q. As soon as you received that nine thousand dollars you resigned? A. I resigned before that.

Q. Was the amount agreed upon before the time you resigned, and upon that being paid to you you resigned? A. They made that proposition, and I accepted it.

By Mr. PARSONS:

Q. Did not Judge Cardozo order that to you? A. The order was made by Judge Cardozo.

By Mr. FLAMMER:

Q. How long has Mr. Yereance been Secretary of the Astor Fire Insurance Company? A. I don't know, sir.

Q. Was there any suspicion attached to him that he was not a competent Receiver? A. I don't know.

Q. When did you first learn that he was appointed a Receiver of the Astor Fire Insurance Company? A. It was the day he was appointed, or the day after.

Q. From whom? A. I think from Mr. Phillips.

Q. Did you know before you were appointed that you might be appointed; you were asked if you would accept the appointment? A. Yes, sir.

Q. Who asked you? A. Mr. Phillips.

Q. Anybody else? A. I don't remember.

Q. When was that? A. About the time he made the application.

Q. When did he ask you; the day before, or two days before? A. I don't recollect whether it was the day before or the same day.

Q. Did you know anything then about Mr. Yereance's appointment as Receiver? A. No, sir.

Q. Who were your bondsmen? A. My brother was one, and I am not positive whether I gave one or two; I don't know who the other one was.

Q. When was that bond executed; do you know? A. No.

Q. Where was it executed? A. At Mr. Nathan's office.

Q. What time of day was it executed? A. Don't recollect, certainly before four o'clock; I always go home before four.

Q. Was it before four o'clock on Saturday? A. I don't recollect; I know it was before four, at Mr. Nathan's office.

Q. Had you then been informed of your appointment as Receiver? A. Yes, sir.

Q. Can you give me the day of the appointment, and of the filing of the bond in the Astor case?

Mr. PARSONS:

October 31st.

By Mr. NILES:

Q. What had Phillips to do with that case? A. He was the plaintiff's counsel.

Q. Who were these clerks you employed; were they the clerks of the Company before this failure? A. Yes, sir.

Q. Was Mr. Yereance employed by you as clerk? A. Yes, sir.

Q. How often did you attend at the office; where did you have your office as Receiver; A. I had an office at No. 4 Warren street.

Q. What was the office of the Astor Fire Insurance Company? A. No. 94 Broadway.

Q. How often did you attend there at the office? A. I had a representative there, Thomas McKay.

Q. Is this Mr. McKay one of the clerks you paid? A. Yes, sir.

Q. How often did you attend there at that office? A. I don't recollect.

Q. Did you attend once a week? A. I can't tell you.

Q. When you did attend, how long did you remain there? (No answer given to this question.)

Q. You received $5,000 for your services and you have no recollection how much time you spent there? A. No, sir.

Q. How did you compute your services, and who fixed your amount? A. I think the Directors of the Company or the counsel.

Q. Did they ask you what your claim was? A. No, sir.

Q. Did you not state that you agreed with them that your compensation should be a certain amount? A. They fixed the amount.

Q. They said nine thousand dollars; was that a subject of negotiation? A. No, sir; I think Mr. Augustus Schell made that proposition to me.

Q. You had nothing whatever to do with fixing the amount? A. No, sir, not a penny; I was to assist until the Company wound up.

By the CHAIRMAN:

Q. Was that in consideration of your services as Receiver, or in consideration of your resignation? A. In consideration of the past, and services for the future; I resigned more for the Company's sake—they wanted to keep the offices of the Safeguard Insurance Company.

By Mr. FLAMMER:

Q. After you received this money, did you render those services on the supposition that you had not rendered sufficient service for the amount received? (No answer given.)

Q. How long were you to continue to render your services? A. Until the Company was wound up.

By Mr. PARSONS:

Q. Did they ever subsequently send to you to come there? A. Mr. Yereance sent.

Q. Are you quite sure Mr. Charles H. Hunt had anything to do with the matter? (No answer given.)

Q. I am desired to ask whether the $11,000 that came into your hands consisted of the interest paid upon the Government bonds of which you have spoken? A. I did not collect that interest.

Q. Who did? A. There was none due in that interval of time.

Q. Then you certainly resigned before the first of January? A. I think I did.

By Mr. NILES:

Q. Were these bonds contained in the same vault of the Safe Deposit Company where they had been before? A. I hired one.

Q. Did you move them at all? A. Yes.

Q. From where? A. They were taken out and handed over to me in the general office of the Safe Deposit Company, and I hired a vault and put them in.

By Mr. FLAMMER:

Q. Did you take them out of any room, or take them out of the building? A. No, sir.

By Mr. NILES:

Q. Did you take them out of the box? A. Yes, sir.

By Mr. FLAMMER:

Q. Did you pay anything? A. I think I paid $35 for the box for the year.

Q. These clerks received this $11,000? A. My clerks received it.

Q. Did you spend an hour in daily attendance? A. I attended to any business which was to be attended to. The clerks which were formerly in the Company were in my employ.

Q. Did you, during the whole time of the Receivership, attend ten full days taken altogether? A. I did not keep any record.

Q. Did you ever stay three hours at a time there? A. I think so.

Q. Did you stay there a day at a time? A. No, sir.

EDWARD M. FELT, sworn and examined by Mr. PARSONS:

Q. How long have you been a lawyer in this city? A. Something over twelve years.

Q. Did you represent the defendants in the Supreme Court in the suit of Hungerford *v.* Patton and others? A. I did, sir.

Q. Do you remember that Mr. Bixby was appointed Receiver in that suit? A. I think he was.

Q. When? A. On the 22d of June, 1869.

Q. Of what was he appointed Receiver? A. Mariposa stock.

Q. What amount? A. I think the market value of the stock then was something between $60,000 and $100,000; the par value was very much greater. I think certainly over $200,000. A part of it was the common stock, and a part of it were the preferred certificates or something of that kind.

Q. Was the application for the appointment of the Receiver *ex parte*? A. Yes, sir.

Q. Did the Receiver ever receive anything, or take possession of anything? A. No, sir. Mr. Patton was out of town when the Receiver was appointed.

Q. Was the suit subsequently settled? A. The suit was settled. I don't think the whole litigation lasted a month.

Q. What compelled the settlement, if anything? A. I suppose the denial of the motion to set aside the Receivership.

Q. Was the motion made, and by whom and for whom, to fix the compensation of the Receiver and his counsel? A. I don't know whether any motion was made. The compensation of the Receiver was fixed before Judge Cardozo by Mr. Nathan and myself.

Q. Did Mr. Nathan make any motion? A. I think he served me with a copy of the order and a notice of settlement.

Q. Before what Judge? A. Before Judge Cardozo.

Q. Did you attend? A. Yes, sir.

Q. Was it then that you fixed the amount of compensation? A. It was then argued—the question as to what the Receiver's fees should be—and the Judge took the papers, and in a day or two settled the order.

Q. Giving how much to the Receiver and how much to his counsel? A. My client has all these papers. I think it was $2,000 to the Receiver and $500 to his counsel. Whatever it was I turned the receipts over to my client.

Q. Is that your recollection, $2,000 to the Receiver and $500 to the counsel? A. That is entered in my ledger.

By Mr. NILES:

Q. What services were there to be rendered by counsel during that month? Was there any litigation? A. No.

Q. Did they get possession of the stock? A. No, sir.

Q. Or get possession of anything? A. Not to my knowledge;

I was present when the Receiver made the demand for the property; the defendant was not in his office, nor in town at the time, and the suit was settled very shortly after that.

By Mr. FLAMMER:

Q. How long was Mr. Bixby Receiver? A. Probably about two weeks.

Q. Were you present at the settlement and the delivery of the property? A. The property was never delivered to the Receiver.

Q. Do you know that it was never delivered? A. I know only so far as an attorney can know in a case.

B. F. RICE was sworn and examined by Mr. STICKNEY:

Q. What is your business? A. Am a lawyer in New York city.

Q. How long have you been here? A. Up to this time, four years.

Q. Where is your office? A. 115 Broadway.

Q. Do you know Mr. W. H. L. Owens? A. No, sir; I don't.

Q. Do you know Albert Nicolay, auctioneer in Pine street? A. I know some one in his place.

Q. Were you ever at his place? A. No, sir, never to my knowledge.

Q. Did you ever purchase, or accompany any person who did purchase, any of the stock of the Mercantile Fire Insurance Company of Mr. Nicolay? A. No, sir.

Q. Do you remember an application made in October, 1871 for the appointment of a Receiver of the Mercantile Fire Insurance Company? A. No, sir.

Q. Do you know Mr. Gratz Nathan? A. Only by sight.

Q. Do you know Mr. T. C. S. Buckley? No, sir.

Committee adjourned to meet on Monday, March the 4th, at 10 o'clock.

INVESTIGATION *into the Charges preferred against Judge* ALBERT CARDOZO, *Judge of the Supreme Court.*

Before the JUDICIARY COMMITTEE of the Assembly.

March 4, 1872.

Present—Hon. L. B. PRINCE in the chair; Messrs. TILDEN, NILES, FLAMMER, STRAHAN, and TOBEY, Members; Messrs. PARSONS, VAN COTT, and STICKNEY appear for the NEW YORK BAR ASSOCIATION; Messrs. FULLERTON and OWEN for Judge CARDOZO.

WILLIAM TRACY called by the Committee, being duly sworn, testified:

Examined by Mr. PARSONS:

Q. Were you a member of the law firm of Tracy, Talmadge & Lee? A. I was.

Q. Did your firm represent the British Commercial Life Insurance Company? A. I represented it as Counsel in the first place, and I think we were substituted as attorneys. I am not quite sure. There had been some little mistake about the attorney, Mr. Meade, who attended for the Company, as I understood, and I think he gave a substitution to our firm. I was counsel.

Q. You mean Mr. E. R. Meade? A. I can't say.

Q. Was there a suit against the Company, in which a Receiver was appointed by Judge Cardozo? A. Yes, sir. I was not general counsel for the Company, but I was counsel in relation to the matters in that suit.

Q. What was the title of that suit? A. George Mooney and Lucinda Mooney, his wife, against the British Commercial Life Insurance Company, the British National Life Insurance Company, the European Insurance Company, impleaded with William Barnes, Superintendent of the Insurance Department.

Q. What was the nature of that suit? A. The complaint was brought by Mr. and Mrs. Mooney against the British Commercial Life Insurance Company, the others being made parties because they had an interest in it, I suppose, for the purpose of having that Company declared insolvent, and a Receiver appointed, and the means distributed.

Q. What were the means of that Company? A. The only means I ever heard of in this country, except some money they sent over to pay some losses, were moneys which were deposited with the Insurance Department at Albany.

Q. Pursuant to the Statute of the State of New York? A. I suppose so. As I understood, they made a deposit some ten or

twelve years before. I have not looked at the papers since the matter was on hand at all, but my general recollection about it is that the British Commercial Life Insurance Company had issued policies to Mooney, or on the life of Mr. Mooney, to Mrs. Mooney, and that they had made a compact, or had sold out in some way or other, to these other Insurance Companies, and that the Insurance Department at Albany had declined to permit the other Companies to go on with the business, because they had made no deposits. The British Commercial Insurance Company had made a deposit.

Q. What was it? A. Originally of $100,000, and afterwards of about $250,000, I believe. I think that is not the precise sum, but it is somewhere near it.

Q. Have you with you here the papers, or copies of the papers, upon which the order appointing a Receiver was made? A. I don't know. I was served with a subpœna to bring all the papers, and I set my clerk, who had charge of them, at work, to give me all the papers there were. I presume this is the paper. I can now tell you exactly the amount of the deposit made by the British Commercial Life Insurance Company. It had amounted to $247,000, as Mr. Barnes stated in his affidavit, not $250,000, as I see by the memorandum that I have got there.

Q. Who was Mr. Barnes? A. Superintendent of the Insurance Department. Here are printed papers containing, among other things, the original complaint in the action.

Q. What other papers were there upon which the order appointing a Receiver was made? A. I will tell you in a moment. [Referring to papers.] The copy of the order contained in this printed book, I presume, is the copy of the original order, because I think these papers must have been made out, on appeal. I do not remember whom the papers were made out by. I do not see the original paper which was served on me, but it may be here.

Q. Will you look at the printed document produced by you, and state whether the affidavits of George Mooney and Matthew B. Breene are there? A. Wait one moment; perhaps I can find the original order. I forgot that the paper was printed.

Q. Copies of which appear in the printed document, the affidavits of Mooney, made October 5th, 1869, and of Matthew Breene, October 5th, 1869? A. I forgot that; I do not find the orders in relation to these matters here. I presume the orders may have been given to Mr. Bristol here, but I don't know. I can look and see if it is according to my recollection of it. [After examining papers.] My general recollection of it is, that these were the affidavits, but, as I say, I had forgotten that that was printed. Let me see—I will look and see whether that was printed in my office or not. I have a sort of notion that the original complaints, and the affidavits accompanying, were printed. This purports to be the copy of the summons and complaint, and

I have no doubt it is. I don't think this paper was printed at my office. It may have been served upon me, by some of the other parties. I do not think it was printed at my office. There does not appear to be an appeal paper. My general recollection of the affidavits is, that they were affidavits of that purport. I have no doubt but that is a copy of them. I had forgotten that there was such a printed paper, and I don't think it was printed at my office. I was the appellant in one or two motions.

Q. What are the two affidavits to which I call your attention, or copies of affidavits? A. My general recollection of them is, that the affidavits contain the substance that is contained there, but I have no doubt at all that those are the affidavits. They were served on me in some proceeding or other, but I can't tell what it was.

Q. Did you attend, upon the return of the order, to show cause, contained in the order, appointing a Receiver? A. No, sir. I wasn't retained until after an adjournment had been had in relation to that. I was retained after there was an adjournment of that order to show cause. The order to show cause was obtained originally, and Mr. Roberton, who was agent of the Committee, appeared there, and I think Mr. Barnes, and I think there was a postponement in the hope of making some adjustment. I was retained on the day of the adjournment of the order to show cause. I think I had only been retained the day before. I was furnished, in some way or other, with a copy of Mr. Barnes' affidavit which was read, and I had obtained an affidavit from Mr. Roberton in relation to the affair, and that he had been telegraphing. He had telegraphed to the Company on the other side, and it was telegraphed back to him, with other statements contained in a paper which you will find there annexed to somebody's affidavit—Mr. Murray's, I think.

Q. Will you not permit us first to ascertain whether you attended to oppose the continuation of the injunction and Receivership when that question came on to be heard? A. Yes, sir, I did; but I was going to tell you how it was done.

The CHAIRMAN:

Will you be kind enough to answer the questions and then stop, unless you come to something that needs explanation?

Q. Please state whether you opposed the motion by affidavits, and if so, by whose affidavits? A. Yes, sir. I think I opposed the motion by the affidavit of Mr. Roberton. Is there any affidavit of mine in there? I think his affidavit was the means of opposing the motion. In the first place I moved an adjournment. That was denied. I moved the adjournment on the same affidavit, showing that the probability was that the Company was not insolvent in England. That motion was denied, and then I opposed the motion on the merits.

Q. Before whom did the motion come on to be heard? A. Before Judge Cardozo.

Q. Can you produce the papers, or copies of them, upon which you opposed the motion continuing the Receivership and the injunction? A. I don't know. I will see whether I can. I have a draft of the affidavit, which is marked as though it had been made perfect and complete.

Q. Whose affidavit? A. John Roberton's.

Q. Is that the only affidavit which was used?

Mr. FULLERTON:

I submit to the Committee that the original papers are accessible and will be more satisfactory.

The CHAIRMAN:

I will suggest that we go on with the copies, subject to the right of the other parties to produce the originals.

Mr. PARSONS:

We will produce the originals if we can get them.

THE WITNESS:

I presume they are on file.

Mr. PARSONS:

We will not use the copies if we can get the originals.

Mr. FULLERTON:

You propose to prove drafts of papers?

Mr. PARSONS:

There is a necessity of proving them. Whether we use them will depend upon whether the original papers can be found or not.

Mr. FULLERTON:

It seems to me that if they were found in the first instance it would be better.

Mr. NILES:

I understand that this witness was subpœnaed to produce the papers.

Mr. PARSONS:

The witness told Mr. Stickney that he could not find any other papers than the complaint. We have the opportunity of subpœnaing him again.

The CHAIRMAN:

We think we had better go on with the copies first, and if we find any difference between them and the originals it will be competent to produce the originals.

Mr. FULLERTON:

That will compel us to get additional papers or to rest upon the copies.

The CHAIRMAN:

We would not rest upon them, and we would only use the copies until the originals can be produced. We will allow these copies to be used for the purpose of getting along with the investigation.

The WITNESS:

I am not sure but I have found the original affidavit. I don't remember John Roberton's handwriting, but here is the handwriting of a Notary, that I know perfectly well, as being sworn to by him; the Notary, in my office. I don't know whether it is Roberton's handwriting or not. This seems to be the original affidavit, of which that seems to be the draft.

The CHAIRMAN:

In whose handwriting is the draft?

A. It is in my handwriting, and that is the handwriting of my clerk, who is also a Notary Public. The signature of one of the jurats is my clerk's; the other one I don't know.

Mr. NILES:

Is he a Notary Public?

A. Yes, sir.

Mr. FULLERTON:

The charge is, that we have removed the original papers from the files. The finding of that handwriting is an answer to it.

The WITNESS:

I don't know Mr. Roberton's handwriting, but this looks very much like the handwriting of my clerk. I have a copy of an order, which must be on file. I am not sure whether that is an original or not (handing paper to counsel).

Mr. NILES:

Are you sure that is the substance of the affidavit?

A. I have no doubt but it is. I said I didn't remember that affidavit, or anybody else's. I see in the order there is an affidavit of mine, but I don't find any such one here.

Q. Can you tell, Mr. Tracy, whether that is either the original affidavit, or a copy of the original affidavit, used upon the motion to continue the Receivership and injunction? A. Well, sir, from my general recollection of what was contained in it, I think it is either the original or a copy of it. It is in the handwriting of my clerk, who is also a Notary Public.

The CHAIRMAN:

Do you want to put that paper in evidence?

Mr. PARSONS:

No, sir; not just now, because if we can produce the original we will do so.

(The affidavits of Breene and Mooney were here marked as Exhibits by the Chairman.)

Q. Was not that motion also opposed upon the answer of Mr. Barnes, the Superintendent of the Insurance Department? A. Yes, sir, it was.

Q. Isn't that a copy of it—I mean the copy in the printed document? A. I think it is. I have looked over it generally. I couldn't swear to it, of course. It is two years since the transaction. It is my general recollection that it is. I find here the draft of my affidavit, which, I suppose, was read at the same time.

To the CHAIRMAN:

Q. Will you be so good as to mark Mr. Barnes' answer for identification?

The WITNESS:

(Interrupting)—No; *that* is not the affidavit. That was on a subsequent occasion.

Q. Did you make an affidavit which was read on that occasion? A. I think I did; I think the order says so. If I did, it was something to the effect that I had been subsequently retained, and hadn't had time to obtain copies of the papers. I had no knowledge, except what was stated to me that day.

Q. Upon the hearing, did you tender any stipulation? A. I don't think I tendered any in writing. On the hearing I offered to pay the amount of money that had been paid on account of this policy by the plaintiff, and all the costs of the proceedings, or to have him reinsured in any respectable Insurance Company in the city. I don't think I made it in writing. I made it, I think, verbally.

Q. In open Court? A. Yes, sir.

Q. And in the hearing of the Judge? A. Yes, sir; the Judge passed upon it.

Q. What do you mean by saying the Judge passed upon it? A. Well, he said that there were other parties in interest, and, it being before the Court, he must protect all parties. I think that was the remark he made. He declined, at all events, to postpone on such an offer, or to regard it at all.

Q. What order did Judge Cardozo make on that motion? A. He made the order, I think.

Q. There is a copy of it in the printed document? A. There is. Well, it was an order—

Q. Continuing the injunction and Receivership? A. Yes, sir.

Q. Shall I find it for you? A. If you please, sir. I don't know but I have a copy of that. It was served upon me. Here is a copy of the order, denying the stay of proceedings referred to.

Q. Is the order in the printed document, dated October 27th, 1869, a copy of the order upon that motion? A. Let me see it, if you please.

Q. Will you look at the order in the printed document? A. (After examining printed document.) I think it is, sir.

(The paper was then marked by the Chairman for indentification.)

Q. Did you take an appeal from that order? A. I think I did, sir. Let me look at my register, and I can tell you better. (Examining book.) November 3d, my register states: "Obtained order to stay, served notice, appealed," and so forth.

Q. You did, then, take an appeal from that order? A. So it seems.

Q. And upon that appeal did you give an undertaking, and did you procure a stay of proceedings, and if so, from what Judge? A. My entry, in my own handwriting, is, that I obtained the order of stay and served notice of appeal upon the County Clerk upon the 12th.

Q. Will you look and see whether you have the order, or a copy of the order? A. Yes, sir. I have the original order here. It is an order signed by Thomas W. Clerke.

Q. Will you produce it, if you please? A. I will. (Produces it.)

(Mr. Parsons read the order, as follows: "The appellants above named, having given an undertaking, with two sufficient sureties, as required by the provision of the code of procedure, I hereby order that all proceedings be stayed upon the order made at Special Term in this action, bearing date October 27th, 1869, pending the appeal in this action to General Term, dated November 5th, 1869. T. W. Clerke.")

Q. Did you receive an order to show cause why that stay should not be vacated? A. My entry, in my register, is that—and is my recollection, too—that on the 5th of November, I received these orders to show cause why the stay should not be vacated—to show cause on the 8th, at nine and a half o'clock, before Judge Cardozo.

Q. Will you produce a copy of the affidavits and order? A. I will, if I have a copy here. I don't know that I have. (Examining.) That is it.

Q. Is that a copy of the order to show cause, which was served on you? A. I think that was the original copy which was served

on me. (The paper was here marked for identification by the Chairman, as Exhibit, "Specification 9, D.")

Mr. OWEN called the attention of the Committee to the fact that there is no specification relating to this matter served upon them, but that he did not object to going on with it, if the Committee felt so disposed.

Mr. PARSONS stated that it was offered as bearing on the charge made in the case of the Mercantile Fire Insurance Company.

Mr. OWEN:

Very well, as long as we understand it.

Q. Who had appeared upon the motion to continue the injunction and Receivership? A. Mr. Gratz Nathan represented the Receiver. Mr. Booth appeared for the plaintiff.

Mr. OWEN:

Q. Give the first name. A. William D. Booth, I think it is. I can't say whether Mr. Nathan made it out. He was there, at all events, for the Receiver.

MR. PARSONS:

Q. Mr. Gratz Nathan? A. Yes, sir; Mr. Barnes, I think, was present, on behalf of the Attorney-General. He was Superintendent of the department, and I think he was present on behalf of the Attorney-General, and I can't say whether Judge Porter, at that stage of the case, was present or not. Judge Porter, on some of the motions, was present; but my impression is, that he hadn't, as yet, appeared there.

Q. The copy of the order states that he was heard. Does that enable you to refresh your recollection? A. No; I can't remember distinctly of his being heard there. He was present on several of the motions. We had a heap of them. We had consultations there also.

Q. As representing whom? A. The Attorney-General, and I think Mr. Barnes did, too—represented the Attorney-General, and also represented the Insurance Department. My impression would have been that Judge Porter wasn't present, but if he is mentioned in the order, he was.

Q. How as to Mr. Rapallo being present? A. Mr. Rapallo represented the plaintiff, I think. No, he didn't. Mr. Rapallo appeared for the purpose of representing some persons who were policy holders.

Q. Other policy holders? A. Yes, sir; he represented other policy holders. I can't say whether he wanted the Receiver changed, but he wanted something done with the fund. I think Mr. Rapallo was present on all occasions.

Q. Didn't he oppose the motion to continue the Receivership and the injunction. Look at the order and state? A. Yes, sir; I remember he did. He sat next to me, and I remember he opposed that.

Q. Didn't he insist that the fund, being in the Insurance De-

partment, under a statute directing distribution—that the Insurance Department should make distribution of the fund, if any necessity there was for it? A. My impression is, that that was not his position. My impression is, that he wanted somebody else for Receiver, or he wanted to permit the policy holders to insure in a particular Company. I don't think he argued the other part, because that was to be argued by other parties. My impression is, that Mr. Rapallo was willing the Receiver should be appointed, if they would insure in another Company. He represented a Company—I don't remember how many holders, but he tells what proportion he represented.

Q. Did you attend upon the order to show cause why the stay on your appeal should not be vacated? A. Yes, sir.

Q. The order requires the defendants or their attorneys to show cause before Judge Cardozo, at a Special Term of this Court, to be held in room number 13, on the second floor of the new Court House, in the city of New York, on Monday the 8th of November instant, at nine-and-a-half o'clock of that day. Was it there that you attended? A. Yes, sir.

Q. Had you ever been in that room before? A. I don't think I ever had, sir; I don't remember that I ever had.

Q. At that time were the Chambers of the Supreme Court being regularly held in the City of New York? A. Well, I don't know. I didn't have occasion to go there, but I suppose so.

Q. And where were the Chambers of the Supreme Court then held? A. They were held in the room where they were always held—on the same floor that the rooms of the Circuit Court are, and that is half way up the stairs to the next story.

Q. Do you know who was sitting at Chambers at that Term? A. I don't remember, sir.

Q. When did you obtain your order from Judge Clerke? A. Well, sir, my memorandum is here, that I obtained that order on the 3d.

Q. November? Yes—no,

Q. Where did you find Judge Clerke? A. I can't tell you, sir; I can't say whether I found him in Special Term or not; I think I did, though.

Q. Do you mean by Special Term, Chambers? A. Yes, sir; I think so, but I can't be certain about that. I think it wasn't obtained out of Court.

By a MEMBER OF THE COMMITTEE:

The order was the 3d of November? A. Yes, sir.

Q. You used the word, "No" after your answer and then broke off? A. Yes, sir, that is the date.

Q. What happened upon the return of the order to show cause why your stay should not be vacated? A. Well, sir, Judge Cardozo heard us, and took the affidavits and stated that he would attend to it; he made some remark of that sort, that he would

attend to it. The General Term of the Court, I think, was in session then, I think. I can't say whether it was the General Term or the Circuit Court. At all events, he left and said he would attend to it. I think it was the General Term, but I can't say. The next I received a copy of the order, vacating the stay of proceedings.

Q. Have you got a copy of the order, or the original served upon you? A. I think I have got it here, sir. Here it is. (Handing paper to counsel.)

Q. It should be dated the 9th of November, or perhaps the 9th? A. Then this can't be the one; it is dated the 24th of December. I think this is an order for an other matter. This was an order in relation to another proceeding. I may have that order. I will look and see.

(The witness was again cautioned by the Chairman not to say anything unless in answer to questions.)

The WITNESS:

Here it is. That is the copy of the order which was served upon me.

(The paper was offered in evidence and marked by the Chairman, "Specification 9, E."

Q. That order states that upon the motion to vacate the stay, the affidavits of yourself and Mr. Roberton were read, doesn't it? A. I think it does.

Q. Have you those affidavits, or copies of them? A. I rather think that this is only the draft of an order. One, I see, is my draft. I guess my draft was used. It was verified before my Notary Public. I think it is the affidavit used on that order.

Mr. FULLERTON:

Affidavits used when? A. Affidavits used to prevent the vacating of the order, staying the proceedings.

Q. You mean these are drafts of the original? A. Yes, sir; I think so; the verification of mine is by my clerk, and he verified, probably, the original copy itself.

Q. Are these drafts in your handwriting? A. I think both of them are.

(The papers were marked for identification by the Chairman.)

The WITNESS:

I presume that that signature of Mr. Roberton and the verification were put on for mere form. Another copy was used.

Q. Were proceedings taken by you to remove the suit to the Circuit Court of the United States? A. Yes, sir.

Q. And when were those proceedings taken? A. My memorandum here is on the 20th.

Q. What month? A. November, 1869. It is an entry, in my own handwriting, and I have no doubt it is correct.

Q. Now, what took place? A. I attended before Judge Ingraham and procured an order to show cause why the case should not be removed to the United States Court. I furnished the bond and Judge Ingraham made the order.

Q. Did he approve the bond? A. He approved the bond. My memorandum states, served the copy of an order. My impression is it was an order to show cause.

Q. Will you state what was done on return of the order to show cause? A. No, it was not an order to show cause.

The CHAIRMAN:

An order for removal? A. Yes, sir; on the 27th of November, I received the order to show cause why the judgment should not be entered.

Q. Now, tell us about the proceedings to remove cause to the United States Court? A. I will in a moment. On the 27th, as I said before, I think I filed a petition for the removal of the cause as to the above named defendant, the British Commercial Life Insurance Company, to the United States Circuit Court, filed the bond of Archibald Baxter, which was approved and accepted by the Court. An order was filed approving the bond and security.

Q. On what day was that done? A. The 27th of November, 1869.

Q. Will you state what proceedings, if any, subsequently took place before Judge Cardozo? A. In relation to that?

Q. In relation to anything. A. I don't think Judge Cardozo had anything to do with the removal to the Supreme Court of the United States. He may have had, but I don't remember.

Q. I don't ask solely with reference to that, but with reference to any proceedings in the case, which subsequently took place before Judge Cardozo. Do you remember, without your register, that subsequently there was a motion before Judge Cardozo to fix the compensation of Mr. Bixby, as Receiver, and of his counsel? A. Well, I don't know anything about that, Mr. Parsons. I never knew anything about these proceedings at all. After the case was removed back into this Court, my impression is, there was an appeal. I am looking to find it in my memorandum, but I can't.

Q. What do you mean by saying it was removed back to this Court? A. It was removed back to the Supreme Court, for the reason that the plaintiff in the suit, who was, as I had alleged, a citizen, showed that he was an Irishman, who had been in this country some eighteen years without being naturalized, and upon the strength of that, the Court had no jurisdiction of it.

Mr. FULLERTON:

It hadn't been removed out of the Supreme Court? A. Not legitimately, although it had in form. When that appeared, it was sent back to the Supreme Court.

Q. Was it remanded? A. My impression is, that Judge Ingraham vacated the order.

Q. Didn't the Supreme Court insist that it retained its jurisdiction? A. Yes, sir; certainly.

Q. Then, so far as the Supreme Court was concerned, the cause never left the Supreme Court, in fact? A. No, sir.

Q. That is it? A. That is it.

MR. PARSONS.

Q. Now, will you state to the Committee what eventually took place with regard to the compensation of the Receiver and his counsel? A. Well, sir, that is all heresay.

Mr. FULLERTON:

That is sufficient, it seems to me.

By one of the COMTITTEE:

Who had to do with that matter? A. Well, there was an agent came from England on behalf of the Company, a Mr. Bristow, and he commenced some sort of negotiations with the other parties.

Q. Whom do you mean by the other parties? A. Well, there were two Insurance Companies that were claiming each a right in relation to it—the right to have the bargain made with them by the Receiver for the reinsurance of it, and Mr. Bristow undertook the management of it himself. Mr. Bristow finished the negotiations for the other party, as I understand, with Mr. Nathan and somebody else. There was a judgment offered for me to sign in my office.

Q. Offered by whom, sir? A. I can't tell you, sir; some lawyer or clerk brought it in to me to sign, and I told him I didn't know anything about it, and I think I didn't sign it.

By a MEMBER OF THE COMMITTEE:

He wanted you to sign for an entry of judgment? A. Yes, sir; in some shape or other.

By a MEMBER OE THE COMMITTEE:

You declined to do so? A. Well, I think I did; I would say that Mr. Bristow came in and he said it was all right, and I signed it for him; I don't remember anything in relation to it. Afterwards, all that I ever did, was, that Mr. Nathan came in once with this Receiver to bring two checks, one for the Company and the other for my services, and I looked and saw that he got the order entered with the order to pay the sums of money, and I think it was according to Mr. Bristow's arrangement. I signed it, and took one check and handed it to my partner who takes care of the money, and the other check I gave to Mr. Bristow.

By a MEMBER OF THE COMMITTEE:

Q. Do I understand you, that pending these proceedings, the

Receiver had had the insurances of that Company insured in other Companies? A. There was an order to have them reinsured in other Companies.

Q. When they came to a settlement, then came the rights of other Companies who had taken insurance from the Receiver? A. That is not the idea exactly. If it is important, I can tell you how it was. This is the history of it. There were two Companies. Mr. Rapallo represented, I think, one of the Companies. He wanted to have these insurances procured in that Company. Judge Ingraham made an order in some of these proceedings, that all the insurances of those people who wanted to be insured in the other Company, the North Western, I think, should have the privilege of insuring themselves—that those persons who had any preference about it, might insure in the Continental.

Q. That I don't care anything about. A. There were the two Companies—rival companies that wanted the insurance.

Q. That is all I want to know, the Companies who were seeking insurance? A. They were seeking it, and brought it before the Court.

Q. Those are the ones you speak of, as entering into negotiations with Mr. Bristow? A. They entered into negotiations.

Q. Are these the Companies you speak of? A. Mr. Bristow is the agent for the British Company.

Q. Now, then, did any one accompany Mr. Bristow, when this judgment was offered—did any one represent your office? A. I can't tell you that.

Q. You don't know that any one in your office knows that fact? A. I don't know. I think very likely one of my partners knows something about it.

Q. Does your register contain any entry on that subject? A. No, sir; my register hasn't any entry in it after November.

Q. Doesn't your register show when it was that you received the fee from Mr. Nathan, of which you spoke? A. I will see. [Examines papers]. There is an entry January 2d, 1870, in reference to on order on motion for judgment. That could not have been me. It must have been some of the young men in the office, who attended with Mr. Bristow; I don't know.

Q. Will you see whether your register will not give the date when Mr. Nathan called and gave you the checks of which you have spoken—one for you and one for Mr. Bristow? A. There is nothing in my register about it. I presume I handed both the checks to one of my partners, and he handed it to Mr. Bristow. Mr. Bristow was there a good deal.

By Mr. PARSONS:

Where did the proceedings, so far as your connection with them was concerned, terminate? A. Well, I think now, looking at this register, it must have been on May 16th, 1870. There are

several proceedings in the cause which have not been referred to in your questions here, and that in relation to questions between these two rival companies, I think.

Q. What happened on May 12th.? A. [Reading]. May 16th, received notice of appeal—policy holders—Rapallo, counsel for them. Below there is, in the hand-writing of one of my office men, "Ended and paid in full."

Q. What date is that? A. There is no date to that; I don't know what date it was; it must have been after that.

Q. What I desire to know is, whether you, or either member of your firm, had anything whatever to do with fixing the compensation of the Receiver? A. I don't know that any member of my firm did; I didn't have anything to do with it, and I don't think I was ever told that any member of the firm had ever anything to do with it. Mr. Bristow used to be there.

By the CHAIRMAN OF THE COMMITTEE:

Will you be kind enough to confine yourself to the questions asked.

Q. When was it that Mr. Bristow came here and entered upon the negotiatiations to which you have referred? A. I can only state from recollection. I think it must have been as early as January.

Q. 1870? A. January, 1870.

Q. Did you, on any occasion, see Mr. Bixby, the Receiver? A. He came to my office with Mr. Nathan to pay up these sums of money. I don't think I ever had three minutes conversation with him in the world.

Q. Is that the only occasion of an interview between you and him? A. The only occasion.

Q. Were there any other interviews between Mr. Nathan and yourself? A. Oh, I have talked with Mr. Nathan a great many times, but I never had any negotiations with Mr. Nathan.

Q. I desire to know whether you ever had any negotiation with Mr. Nathan at any time? A. I don't think I had.

Q. Do you know who it was that fixed the compensation of Mr. Nathan as Receiver, or his counsel? A. No, sir, I don't.

Q. Were you present when any motion of that kind was made? A. I wasn't sir.

Q. Was any member of your firm, or any one in behalf of your firm, so far as you know? A. I don't know that any member of my firm was there, sir.

Q. Was the matter ever mentioned in your hearing in your office? A. No, sir; I don't think so.

[Mr. Fullerton objected to the further continuation of this examination.]

Mr. PARSONS:

It is quite proper that we should ascertain whether the witness

knows that any member of the firm was present at such negotiation.

Mr. FULLERTON:

That is not the way to have it appear on the minutes.

Mr. PARSONS:

I went to know whether there was any talk in the office of the witness, for the purpose of ascertaining which of the partners had any such talk.

The WITNESS:

I don't think I ever knew anything about it.

Q. Do you know whether the Receiver had actual possession of the fund, or any part of it? A. I don't know indeed, sir; I suppose he had sir, but I don't know.

By the COMMITTEE:

What funds do you mean, Mr. Parsons?

Mr. PARSONS:

The funds deposited with the State Insurance Department.

By a MEMBER OF THE COMMITTEE:

The affidavit states that there are $26 in hand, and $1,200 received for policies.

Mr. PARSONS:

I will make my question a little more specific. I refer to the funds in the Insurance Department.

The WITNESS:

I don't know, except his payment of the checks to me. I suppose he had, but I don't know.

Cross-examination by Mr FULLERTON:

Q. What was the style of the parent Company? A. How is that?

Q. What is the name of the parent Company? A. The name of the Company that deposited the money, and that I appeared for was the Brititish Commercial Life Insurance Company.

Q. That was an English Company? A. Yes, sir.

Q. Had a branch in New York? A. I suppose it must have had an agency in New York, originally.

Q. What has become of the parent Company—the British Commercial Life Insurance Company? A. I have known nothing in relation to it; I supposed it had finished up its American business.

Q. Hadn't you heard that it had failed? A. I heard within a few days that the Company went under.

Q. Wasn't it published in all the papers throughout the country? A. I don't know.

Q. That the British Commercial Life Insurance Company had failed? A. I don't know. It must have been from a newspaper I got it; it was only within a few days that I have heard anything about it; I don't think, until this morning, I could have told what the title of it was.

Q. The other two companies, named in the title of this cause, never made any deposit with the State? A. So I understood; I understood that the British Commercial Life Insurance Company had been absorbed by one of these Companies.

Q. And they were receiving the benefit of the insurance? A. There was not any particular benefit.

Q. Well, whatever benefit there was? A. I suppose on the other side there was. There was nothing but paying debts, paying policies here and receiving the premiums on the old policies. I understood that there had been no new policies issued for some time—ten or twelve years.

Q. Wasn't there some old policies? A. There were some 150 old policies outstanding—something like that.

Q. You offered to repay the money; what money is that? A. I think there was a little over $100 that Mooney had paid for premiums. I offered to repay him all the money he had paid for premiums, for the costs of the suits, or to re-insure him in any Insurance Company he chose in the city of New York; that is the offer I made.

Q. Had this agent from Europe arrived then? A. No, sir, Mr. Roberton was the agent here, and he had the power to do such a thing.

Q. Now, did you get an order from Judge Clerke at his house, in that proceeding? A. I think not, sir; I know I never saw Judge Clerke in his house in my life; I may have found him around the hall somewhere, but I never saw him at his house.

Q. Do you know whether Judge Cardozo wrote an opinion on the argument on the motion to vacate the stay of proceedings?

A. I don't remember, but I think likely he did; I don't find any opinion, and I don't remember ever to have seen any.

Q. Did you see an opinion on the motion to vacate the injunction? A. Well, if it is there I did, but I have no particular recollection of it at all.

Q. You have no recollection of it independently of the printed book, have you? A. No, sir, I have no recollection of having seen any of Judge Cardozo's opinions; I may have had them, and may have sent them away, because I sent most of the copies of these papers to the Company in England; I may have had a copy of Judge Cardozo's opinions and sent it there, but I don't remember now.

Q. I will read the opinion of Judge Cardozo to vacate the injunction and the Receivership: "Cardozo, Judge. The insol-

"vency of the British Commercial Life Insurance Campany can-
"not be doubted on the papers before me, and it is equally clear
"that the affairs should be closed up, and the funds within our
"jurisdiction administered so as to protect the best interests of
"the policy-holders, either by re-insurance or otherwise. The
"Company has not done any business here since about 1862, its
"authority to collect the interest on the deposits in the insurance
"department being revoked in 1861, in consequence of the 'un-
"'satisfactory condition of the affairs of the Company.' The Su-
"perintendent does not suggest that its affairs have improved
"since. The plaintiff charges that it is insolvent, and the agent,
"who ought to know, and knowing, should state the fact
"plainly and positively, only avers that it is insolvent, as
"he is informed and verily believes. It is plain enough that
"the only way to protect the policy-holders is to apply
"the funds here to their re insurance. The statute creating the
"office of Superintendent of the Insurance Department and the
"amendatory act of 1869, only refers to the proceedings taken
"by the Superintendent. They do not prevent others interested
"in the Company from moving when the Superintendent does
"not, but when they proceed the practice is the same as gov-
"erns and and applies to any other similar action. The motion
"is granted." Who granted the order in reference to the re-
manding of the case to the State jurisdiction from the Federal
Court? A. I can't tell, sir. My impression is it was Judge
Ingraham himself.

By the CHAIRMAN:

Q. You never went into the Federal Court and took an order there? A. I think not.

Q. You probably filed copies? A. No, sir; I don't think that was the practice there.

MR. FULLERTON:

Q. This action was commenced by the Attorney-General, wasn't it? A. No, sir; by Mooney on behalf of himself and others. George Mooney and his wife on behalf of himself, and others who might come in.

Q. The Attorney-General opposed? A. Yes, sir.

Q. Who appeared for the policy-holders other than the plaintiff? A. Mr. Rapallo appeared, as I stated, for some of them.

Q. The action was brought by the plaintiffs, not only in their own behalf, but also for those who were similarly situated with themselves in relation to the matters and things alleged in the complaint? A. Yes, sir.

Q. Now did any of the policy-holders appear other than through Mr. Rapallo? A. I think one intervened. I have got an entry here.

Q. If you recollect the fact that some one or more did intervene, that is sufficient. A. I think one man did intervene.

Q. By intervening you mean coming in as a plaintiff? A. Yes, sir. I think one man did.

Q. Now, after that intervention by one of the policy-holders as a plaintiff, and after the appearance of Judge Rapallo for other policy-holders, did you understand that it was in the power of the Court then to accept of your offer to pay the amount which the plaintiff had paid for premiums and for stock? A. Well, I supposed he might. At all events I supposed he might make an order vacating the whole thing.

Q. Make an order vacating the whole thing when the rights of others had intervened? A. There was no intervention at the time I made this offer.

Q. Judge Rapallo had appeared, hadn't he? A. No, sir. He came into Court. I don't think he entered an appearance. He came into Court in relation to this matter, representing some 150 policies, I should think. No, it could not have been so many as that. It was a large number. He made some sort of an opposition to it.

Q. Didn't he participate in the controversy before Judge Cardozo? A. Well, my impression is that he didn't want the Receivership continued at all. I think he wasn't there for the purpose of having the Receivership continued.

Q. Didn't he urge that the Receivership should be continued? A. I don't think he did.

Q. Are you positive of that? A. There is some affidavit somewhere, I presume, to that effect.

Q. Didn't Judge Rapallo oppose your suggestion? A. No, he didn't, because he advised with me; I remember distinctly.

Q. I didn't ask about his private advice. A. No, sir.

Q. Didn't he claim that that shouldn't be done unless his clients were paid also? A. No, sir; I don't think he did. I am confident he didn't.

Q. Well, did he, on behalf of those for whom he appeared, consent to the proposition in Court? A. I don't remember that he did.

Q. Well, that is enough. A. I don't remember that he did openly consent. He approved the proposition, I know that.

Q. Did he approve it in open Court, so that the Judge could hear him? A. I don't know that he did.

Q. Well, then, please answer my questions. I don't want to know whether he approved it privately, but in open Court. Did you understand, after that intervention, such as it was, that the Court would accept your proposition? A. At the time, sir, I did not see that there was any objection to the Court accepting my proposition.

Q. That isn't the question. A. After the intervention of this party that I spoke of; that was some time after.

Q. I am not talking about that. Did you understand, then and there, at that time, when you made the proposition, that the

Court could accept it? A. I understood that the Court could accept it so far as this. They might say, we won't go and hold this injunction, and keep this Receiver appointed, when so fair a proposition was made. That is my view of it.

Q. On the part of one individual? A. There was only one single individual. I appeared for the Company. There was one individual who was damnified by the alleged insolvency of the Company, to the extent of $100 premium.

Q. There was a lawyer appearing for some one hundred policy holders? A. But not objecting to this proposition.

Q. Appearing, I say. A. He was appearing. I don't think he had appeared formally. He was appearing in Court for the purpose of protecting the interests of his clients.

Q. And thus appearing to protect the interests of his clients, who were policy holders, did you regard it then as proper for the Judge to accept of your proposition, and disregard the rights of those policy holders? A. I most certainly did.

Q. I only wanted to know what your ideas of the law were. A. I may be wrong in my ideas of law, but those were my ideas.

Q. Who fixed the amount of your fee? A. I didn't do it.

Q. I didn't ask you that, you know. A. Well, I suppose the Court did; I don't know.

Q. Wasn't your firm represented in Court? A. I couldn't tell you that; I don't know whether they were or not.

Q. That is enough. You say you can't tell me, and that is enough? A. That is all I can say about it.

Q. You are saying something else all the while? A. That is all I mean to say.

Q. Then you say a great many things you do not mean? A. No, sir.

Q. Have you no knowledge at all how your fee was fixed in Court? A. No, sir; I have no knowledge; I have got information in regard to it; I had no knowledge; I had no information until after the whole matter was over.

Q. Be kind enough to state the amount of it? A. $5,000.

Q. You didn't object to it? A. No, sir; I didn't.

Q. It was a reasonable sum, wasn't it? A. It was a reasonable sum, I think, for the services I performed.

Q. We don't complain of it at all. Perhaps you recollect the grounds upon which Judge Cardozo vacated the order, staying proceedings? A. I don't think I do.

Q. Now, wasn't it that the appeal had been taken too late? A. I can't remember any opinion of Judge Cardozo about it. The order was served on me the day after the argument. I have no recollection of seeing the opinion of Judge Cardozo, but it may have been so.

Q. Wasn't that the ground taken in Court, that the appeal was taken too late? A. Well, I have an impression that that

was the ground taken against me, but not against the Attorney General, because his appeal had been had, and that stayed the proceedings *per se*.

Q. That ground was taken against you? A. I think that the suggestion was made by somebody, and I think it was answered in that way—that the Attorney-General had appealed.

Q. Was that agent that came out a lawyer? A. I don't believe he was; I don't think he was a lawyer.

Q. Well, what do you believe about it? A. Believe about what?

Q. What was your opinion as to whether he was a lawyer or not? A. About what?

Q. Whether he was a lawyer or not? A. Well, I don't know what his opinion was.

Q. Didn't he take the principal charge of the case after he came out here? A. Oh! he conducted all the negotiations there was about it, as I understood.

Q. After he came out here? A. Yes, sir; I made a report to the people on the other side, and, after that, I hadn't anything to do with the balance of the case, only as I have told you.

Q. What about the agent you have mentioned? A. Well, he bossed the job, I guess.

Re-direct examination by Mr. PARSONS:

Q. Wasn't the intervention of the one party of whom you have spoken in the suit long after the hearing before Judge Cardozo on the motion to continue the injunction and Receivership? A. That is my recollection, sir—a good while after. It couldn't have been long after; it was November 9th; it wasn't after the order; it was the same day I received a copy of Judge Cardozo's order, vacating the order staying proceedings; John Dyer came in with the plaintiff.

Q. The motion to continue the Receivership was made October 27th, wasn't it? A. That was the motion on the first order.

Q. Well, that is what we are speaking of? A. Yes, sir.

Q. When you made this offer? A. Yes, sir.

Q. So that it was some two weeks after that before this John Dyer intervened? A. Yes, sir.

Mr. FULLERTON:

Was it argued on that day? A. It was argued on the 23d.

Q. Of October? A. On the 23d of October; my register shows that. Judge Porter and Judge Rapallo resisted the motion, occupying from ten to two, before Judge Cardozo. That order, the order of October 27th, 1869, states "Charles A. Rapallo having been heard by courtesy, as counsel for certain persons claiming to be policy holders, but who hadn't come in as parties to this action, in opposition thereto."

Q. The original order continued the Receivership? A. Yes, sir.

Q. Does that order above quoted, state the position of Judge Rapallo as to that hearing? A. Well, sir, that was it.

Q. That states his position, does it? A. Yes, sir.

Mr Parsons:

Q. Don't you remember, upon the hearing of that motion, Judge Rapallo, in his argument, stated to the Court, and used this expression, that he didn't wish this Company to be a milch cow for a Receiver? A. I don't remember the phrase; he may have done so, but I don't remember.

Q. Have you any recollection on the subject? A. No, sir; I havn't at all.

Mr. Fullerton:

Nor has anybody else.

Mr. Parsons:

That is rather a strong statement.

Mr. Fullerton:

No stronger than the facts warrant.

Mr. Parsons:

Q. The opinion read by Judge Fullerton, given by Judge Cardozo on that motion, stated that the agent, who ought to know, and knowing, state the fact plainly and positively, only avers that it (referring to the Company) is not insolvent, *as he is informed and believes;* was the person referred to there Mr. Roberton? A. Yes, sir.

Q. Did you, when that motion came on, ask Judge Cardozo to postpone the hearing until you could send to England and ascertain positively the situation of the affairs of the Company? A. Substantially that, but not exactly.

Q. What was asked by Judge Cardozo? A. I represented to him that we had telegrams from the other side, denying all the allegations of insolvency, and I asked him for time to enable us to send to England, and I would telegraph to England to send us affidavits. His answer to that was, that this was the second adjournment, or this was the adjournment, and that he must go on with it.

Q. He denied your application? A. He denied my application.

Q. The Company, and all the officers of the Company, were in England, were they? A. Yes, sir. Mr. Roberton had resided in the city here, but I don't think he ever had any personal communication with the officers of the Company.

Q. So that the only affidavit he could make was on information and belief? A. That was all, sir.

Q. What was the date when your appeal was taken from the order of October 27, 1869? A. November 3, 1869.

Q. And how long was that after the order; wasn't it within a

week? A. Yes, sir; six days—no, sir, it would be the seventh day.

Q. Do you mean to say, then, that an objection was made, upon the argument of the motion to vacate the stay of proceedings, that your appeal was too late? A. I think there was something about it.

Q. Was it too late? A. I didn't suppose it was too late.

Q. What is the leugth of time within which to appeal from an order? A. My impression is that it is ten days; I don't remember.

Q. Is it not thirty days? A. Thirty days from judgment. I can't say whether it is thirty days from an order or not. I am dull on that.

Q. The order of Judge Cardozo, vacating your stay, was within less than fifteen days, wasn't it, of the order from which you appealed? A. Yes, sir. I appealed on November 3. On the 9th I received a copy of the order made the day before vacating the order for stay of proceedings.

Q. Did you ever hear any reason assigned by Judge Cardozo, or hear of any reason assigned by him, for vacating that stay of proceedings? A. I can't tell you, sir, unless there might be an opinion here. I don't know; I can't remember.

Mr. PARSONS put in evidence the following papers: The complaint and affidavit of Mooney, made October 5, 1869, and of Breene, made October 6, 1869. The answer of the Superintendent of the Insurance Department, William Barnes, sworn to October 21, 1869. The order of October 6, 1869, appointing the *ad interim* Receiver, and the order of October 27, 1869, making that appointment permanent.

The complaint of Mooney was marked "Specification 9, F." The affidavit of Mooney was marked "Specification 9, G." The affidavit of Breene, "Specification 9, H." The answer of defendant Barnes, "Specification 9, I." The order of October 6, "Specification 9, K." The order of October 27, "Specification 9, L."

Mr. FULLERTON put in evidence the report of Mr. Bixby, the Receiver, dated November 4, 1869, which was marked "Specification 9, M."

He also put in evidence the opinion of Judge Cardozo, which was marked Exhibit 9, N."

Also the order of Judge Cardozo, dated October 8, which was marked "Specification 9, O."

Also the contract for re-insurance, which was marked "Specification 9, P."

Mr. NILES:

How much was paid over to the agent by the check you have

referred to? A. About $11,000 or $12,000; I don't remember exactly.

Mr. PARSONS:

Q. I would like to ask you whether you could, by looking at this paper which was in your bundle, state exactly what was the position taken by Judge Rapallo upon the argument of the motion to continue the Receivership and injunction? A. Well, sir, my recollection has been refreshed by looking at this and remembering about it. Judge Rapallo appeared with a paper signed by quite a large number of the policy holders, in which he prayed that the Receivership should not be affirmed or continued. This is a copy of the paper, I have no doubt at all.

Q. What was his application in reference to where the money should go, or was it that it should remain where it was? A. His idea was to have a re-insurance in some Company that he represented. My impression is that it was in the North Western Insurance Company.

Q. Won't you look at that paper and see whether it refreshes your recollection as to anything stated by him with reference to what should be done with the fund? A. Well, he didn't want the fund disturbed.

Q. What do you mean by that? A. The fund was in the hands of the Insurance Department at Albany; and now, it recurs to me, and I think it was said by him, that by registering the policies in the Insurance Department, it would insure the application of the funds to those policies; but in fact I don't remember that he said on the motion, and I can't distinctly recollect that he said on the motion, that the North Western Insurance Company would insure them.

Q. I didn't ask you as to that, but I did ask you whether he did say on the motion, that he desired the fund to remain where it was, in the Insurance Department? A. Yes, sir, I might state he did.

Q. And that by registering the claims of all the policies there that would secure an even distribution of that fund? A. I don't know that he stated that in his remarks to the Court.

Q. I only ask you as to what he said to the Court? A. I don't remember that he said that to the Court; I only remember that he said that, but I don't remember whether he stated it to the Court.

Q. Will you look at the recital in the order of Oct. 27th, 1869, and see whether that does not refresh your recollection, that you submitted on that motion a written stipulation to pay the plaintiff, or to reinsure? A. Well, I have a sort of impression now, that I did sit down and write it in Court, but I shouldn't like to state positively that I did. I didn't have any prepared in advance, because I remember getting up and stating it, and I have a sort of a notion that I did sit down and prepare a stipulation.

By Mr. NILES:

Q. Did you offer a written stipulation to re-insure? A. I have an impression now that I did.

Q. Did you offer to put it in writing? A. I offered to make the stipulation as broad as I could. My impression is now that I sat down and wrote the stipulation and read it, but I would not be positive about it. That order wasn't drawn by me, but by my adversary, so I presume it is accurately stated.

A recess was here taken until 1.30 P. M.

GRATZ NATHAN, a witness recalled by the Committee—examined by Mr. PARSONS:

Q. Do you know who is E. D. Benedict, attorney for the partitioners in the matter of the Mercantile Insurance Company? A. No, sir; that is all I do know about him; I do not think that I have ever seen the man in my life, certainly not to know him.

Q. Do you know who is B. F. Rice, whose name was signed as attorney for Lay, on the transfer to Owens of the ten shares of stock on which the petition was based? A. No, sir! I never heard of him before, and this is the first I knew of the existence of Mr. Lay. I do not remember that I ever heard of Mr. B. F. Rice, until you asked of me the other day.

Q. When you were last before the Committee, you stated that you had not with you one check book covering a portion of your account with the Mechanics Banking Association. Have you, since the examination, found that book? A. No, sir; I have made very diligent search for it.

Q. And do you mean to state that you have no reason to know where that book is? A. I do, most emphatically.

Q. Have you produced the books which you previously had before the Committee? A. Yes, sir.

Q. And have you also produced the returned checks which you were requested by subpœna to bring here? A. Yes, sir.

Q. Do these return checks cover the entire period of your account in the Mechanics' Banking Association? A. I know they do from January 1st, 1868; I am pretty sure they do; they cover 1868, 1869, 1870 and 1871.

Q. You were requested at the close of your partial examination to prepare and furnish for the Committee a statement showing the amounts of fees received by you as Referee, where the reference had been ordered to you by Judge Cardozo, and also the amount received by you as counsel for the Receiver, where the Receivership had been ordered by Judge Cardozo. Have you prepared such statement? A. No, sir; as I have stated in my examination, it would be impossible to do it. I have made such efforts

as I could, to get the material to do so, but it would be impossible; there would be no use trying further.

Q. Do you mean, then, that the eight or ten cases of fees, which you stated on your former examination, are the only cases of your fees as Referee which you can furnish to the Committee? A. No, sir; all that I remember to have sworn is that the amount of my fees in partition suits, from the time the Ledger commenced, that did not cover foreclosure suits, I could give. The foreclosure suits during the same period, so far as any cases are concerned, which do not appear in the book, I might possibly remember the amount of the fees in some of them, but in the larger majority I should not, for, as I stated, it was not until 1870 I kept a register of references, and I have no complete lists even of the titles of the cases themselves.

Q. Can you tell the Committee the number of references which have been ordered to you by Judge Cardozo since January 1st, 1868. A. No sir.

Q. Can you give then no idea on that subject? A. No, sir.

Q. Would they number as many as 200? A. I should think so, sir; references of all kinds, probably more that that in four years: not much larger I should say—about the number; I am only guessing at it. I had not quite answered the previous question. There are some partition suits in which I acted as Referee before the time covered by that Ledger, that I can remember the titles of, probably all of them; I have not had a great many partition suits altogether. So far as other references are concerned, for the time not covered by the Ledger, I probably cannot remember the title of any of them. So far as the partition suits are concerned, I do not think I can, in many of them, if in any, remember the amount of the fees.

Q. Did you not receive from Judge Cardozo, in the year 1868, as many as ninety-two references? A. I have no idea whether I did or not.

Q. Are you able to state that you did not? A. I am not. I do not believe that I have, but it is impossible to say.

Q. Did you, in the year 1869, receive as many as eighty-four references from Judge Cardozo? A. I should make the same answer to that question.

Q. Did you, in the year 1870, receive as many as ninety-five references from Judge Cardozo? A. The same answer.

Q. Did you, in the year 1871, receive as many as sixty-four references from Judge Cardozo? A. The same answer.

Q. Will you state what is your best recollection whether the numbers which have been stated to you correspond with the number of references received for that period from Judge Cardozo? A. Oh, I have no recollection on that subject at all.

Q. You have stated that you can give the titles of the partition suits in which Judge Cardozo appointed you Referee, prior to the commencement of the register of which you have spoken.

Please to state the titles of those partition suits. A. I have thought over the matter since I was last examined, and made a memorandum of some I have thought of, and I will give it to you: Scott v. Scott.

Q. Do you know the date? A. No, sir. Roberts *v.* Wheeler, Wilson *v.* Messler, Bowen *v.* Haines, Everett *v.* Cozzens, Kipp *v.* O'Connell, Fry v. Canfield, Bell v. Bell.

Q. Are these all you can state? A. Yes, sir.

Q. Were these all earlier in date than when you commenced to keep a register? A. I think they must have been; I do not remember in reference to the date. I have thought over the partition suits in which I acted as Referee, and these occurred to me, and as I did not read them from the Ledger the other night, they must have been prior to that time.

Q. Are you able to state that these are all the partition references ordered to you by Judge Cardozo, prior to the commencement of your register? A. I think they are. I give them merely from recollection, and my recollection may be deficient as to some of them.

Q. Are they all of which you can recollect? A. Yes, sir.

Q. What is the date when the register commenced? A. About the 7th of May, 1870, I think.

Q. Can you state what, or about what, was the Referee fees ordered by Judge Cardozo to you, in the suits which you have now named, or in any of them? A. No, sir. I do not know that in any of them the fees were fixed by him positively.

Q. Have you not stated, on your former examination, that in all the cases in which you were Referee, Judge Cardozo has made all the orders? A. Yes, sir, I believe I have, but in many cases the fees were never fixed by order.

Q. Do you mean that you deducted them? A. Yes, sir; they were made by agreement with the parties.

Q. Were they not then confirmed by Judge Cardozo's order? A. No, sir. For instance, the case of Roberts *v.* Wheeler—I think that was the first partition suit that I ever had—the attorneys agreed that I should have a certain amount as fees, and I deducted that amount.

Q. What voucher did you take in those cases to show the disposition of the money, if it did not appear in the final decree? A. It appeared by the statement in my final report as deducted, so much for fees.

Q. Did you not procure that to be confirmed by Judge Cardozo? A. No, sir; it was filed, and no exception taken.

Q. What has been your practice in reference to procuring a confirmation of your report of distribution? A. I have never done anything except just to file it.

Q. Can you state what was the amount of your fees in the case of Scott *v.* Scott? A. No, sir, I have no recollection.

Q. Can you tell what were the proceeds of the sale? A. No, sir.

Q. Were they large or small? A. If I remember right, the property was a house and lot on 28th street near 5th avenue that was sold; I do not remember exactly, but probaly 29th street or 30th street—in that neighborhood.

Q. Were your fees in that suit 2½ per cent. of the gross proceeds? A. I have no recollection at all, or whether they were fixed by order or by agreement.

Q. Can you state what was the amount of your fees in the case of Roberts *vs.* Wheeler? A. Yes, I remember, or at least I think it was $1,500.

Q. What were the proceeds of the sale in that case? A. That I do not know.

Q. Were the fees at the rate of 2½ per cent? A. I think not, sir.

Q. Were they less, or more? A. I think lees.

Q. Can you state what the amount of fees was in the case of Wilson *vs.* Messler? A. No, sir.

Q. Can you state the amount of the sale? A. I cannot.

Q. Was it small or great? A. Large.

Q. Were your fees less less than 2½ per cent? A. I have no recollection.

Q. Did they amount to $5,000? A. No, sir.

Q. Or to as much as $3,000? A. No, sir.

Q. Can you state any recollection on the subject? A. My recollection is that they were very much less; I think the amount of the proceds of the sale was within $50,000; my recollection is not at all definite on this.

Q. Have you stated what were the fees in the case of Boewn *vs.* Haines? A. No, sir.

Q. Can you give no information on that subject? A. My best recollection is that they were somewhere between $500 and $1,000, and nearer to $500, but I would not like to give anything more than between these figures; it is a matter of guess work; all these facts are accessible from the files in the Clerk's office.

Q. Can you answer as to the fees in the case of Everett *vs.* Cozzens? A. No, sir.

Q. Can you give no information? A. I remember where the property was; that is all.

Q. Were the fees large or small? A. I cannot remember.

Q. Were they as much as $5,000? A. No, sir.

Q. Or as much as $3,000? A. No, sir.

Q. Is that the best answer that you can give? A. The best answer I can give is that I have no recollection on the subject except they were not as large as $3,000 and my best impression is they were a great deal less.

Q. Can you tell what the fees were in the case of Kipp *vs.*

O'Connell? A. No, sir; I have no recollection of that case, not even as to where the property was.

Q. Have you any recollection of the case of Fry *vs.* Canfield? A. No, sir; that included property in two counties, I remember.

Q. Were the fees large or small in that case? A. I think they were not very large; I do not remember.

Q. Were they as large as $5,000? A. No, sir.

Q. Or as $3,000? A. No, sir; I think not as large as $1,000, though they might be.

Q. Can you answer as to the case of Bell *vs.* Bell? A. No, sir.

Q. What is your best recollection of the amount of fees in that case? A. That they were small.

Q. Does that mean $1,000? A. No, sir; it means probably $100, or $200; that is my best recollection.

Q. In each of these cases were your fees somewhere about 2½ per cent. on the proceeds of the sale? A. No, sir; it was a very common thing with me to arrange with the attorneys when I came to make a distribution on a certain fee, without regard to a per centage.

Q. Can you give give the name of the attorney for the plaintiff in these suits? A. I think so.

Q. How as to the case of Scott *vs.* Scott; who was the attorney? A. Ward, Jones & Whitehead.

Q. How as to the case of Roberts *vs.* Wheeler? A. Platt, Gerard & Buckley.

Q. Who was the attorney in the case of Wheeler *vs.* Messler? A. Bloomfield, I think.

Q. In the case of Bowen *vs.* Haines? A. A Mr. Thomas, I don't remember his first name.

Q. In the case of Everett *vs.* Cozzens? A. Charles Jones.

Q. In the case of Kipp *vs.* O'Connell? A. I do not remember.

Q. Can you remember the name of any of the attorneys for either the defendant or plaintiff in that case? No, sir.

Q. In the case of Fry *vs.* Canfield? A. Stalknecht & Hall.

Q. In the case of Bell *vs.* Bell? A. Mr. Thomas J. McCahill.

Q. Can you tell the Committee what was the amount, without reference to particular cases, which you did receive as Referee's fees from references ordered to you by Judge Cardozo in 1868? A. No, sir, I have no idea.

A. Was it as much as $50,000? A. No, sir.

Q. Then you have some idea? A. I have that amount of recollection and knowledge upon the subject.

Q. Can you state any amount that you will say will certainly cover the amount of fees received by you on such references during the year 1869—I mean on all references ordered to you by Judge

Cardozo? A. I should think $10,000 would cover it; that is my best recollection.

Q. Will you state positively that $20,000 would? A. Yes, sir.

Q. Can you name any less amount which you will state positively would cover it? A. I think I would be entirely safe in saying $15,000.

Q. Will you state so positively? A. Yes, sir.

Q. Can you state any amount that will certainly cover the fees received by you as Referee, in references ordered to you by Judge Crrdozo during the year 1869? A. I should certainly name $15,000 as the outside figure; my impression is that it was very much less.

Q. During the year 1870? A. I would again name $15,000 as the outside figure.

Q. During the year 1871? A. Yes, sir; I name the same figure; I do not think I made $15,000 on references year by year.

Q. Can you state that positively as to each year. A. I feel safe in doing so.

Q. You mean that you will state positively that in neither of these four years did your fees in references ordered to you by Judge Cardozo exceed the sum of $15,000? A. Yes, sir.

By Mr. NILES:

Q. When was it you received the $5,000 and 3,000 that you spoke of before? A. The $5,000 was not received as Referee; that was in 1870.

Q. That was as Receiver? A. As Receiver.

By Mr. PARSONS:

Q. Have you a recollection as to the maximum fee received by you as Referee, when the reference was ordered to you by Judge Cardozo? A. Do you mean in partition suits.

Q. Partition suits or any suit? A. In partition suits was the question addressed to me, then; $3,000 I stated, and I still fail to recall any partition suit in which I got a larger fee; there was a case of Brett *vs.* Roe which was in my hands, as Referee, in various phases and at various stages for a considerable time, in which I got a fee of $5,000 by the consent of all parties.

Q. What was the nature of that suit? A. It was a suit the main issues of which I have not a very distinct knowledge of; it was brought for the purpose of declaring void a certain conveyance alleged to have been made to one of the defendants while acting in some fiduciary capacity, and the estate conveyed by which was claimed to have been in equity the property of the *cestui que trusts.*

Q. Who were the plaintiff's attorneys in that suit? A. Judge Spaulding.

Q. Who represented the defendant? A. Mr. Westbrook—Frederick E. Westbrook.

Q. Is $5,000 the largest reference fee received by you? A. Yes, sir.

Q. Are you quite sure about that? A. Yes, sir; I am. I certainly have no recollection of ever receiving a larger fee, or ever having received as much as that in any other case.

By Mr. NILES:

Q. What year was that? A. In 1869 or 1870—I forget which.

Q. The year when you received that fee were your total fees lessthan $15,000? A. I think so; I have given my best recollection; I have not gone over the figures, but that is my best belief.

By Mr. PARSONS:

Q. Do you remember the suit of Dinsmore *vs.* Adams? A. Yes, sir.

Q. How long was that reference before you? A. A very short time—not more than two or three days, I think.

Q. Was the order in that case made by Judge Cardozo? A. I do not know, sir; it is very likely it was, but I do not know that I ever saw it. I presume it was, but I cannot speak from recollection.

Q. Was there any order made upon your report, fixing the fee to you? A. Not that I know of.

Q. How many sessions of that reference were held before you? A. One.

Q. What was the reference fee in that suit? A. One thousand dollars. I attended at the attorney's office at his request. Nothing was said about fees until the matter was determined—that is, I signed my report—when he gave me voluntarily $1,000. I was inclined to think it was too much, and he said it made no difference to any one, and I retained it.

Q. Who was the attorney? A. Blatchford, Griswold & Seward. It was an *ex parte* matter, as I understand.

Q. Did you draw up your report in that case? A. No, I think it was prepared for me. It was to pass some accounts which I examined carefully; that was all.

Q. Was there any testimony given before you? A. Yes, sir.

Q. Do you know what took place after the report was prepared, before the confirmation of the report? A, No, sir.

Q. Did you receive your fee before the confirmation? A. I think I did.

Q. Without any order? A. Yes, sir; I think there was no order about it.

Q. Did you do anything in that matter after you had signed the report? A. No, sir.

Q. Are you quite sure about that? A. I certainly do not recollect doing anything, except to spend the money.

Q. Will not your check books enable you to state the amount received by you for Referee's fees, with accuracy, or with an ap-

proximation to accuracy? A. I think not; I know they would not. In a great many of the cases I have no minute of it.

Q. Was not the amount of the fee in the case of Roberts *vs.* Wheeler $1,825.30? A. I think not, sir. Very likely the amount that I retained, including disbursements, may have been that sum, but I think I have a distinct recollection of the fees being fixed by agreement at $1,500.

By Mr. TILDEN:

Q. When was that? A. I think it was in 1869, but I would not be sure.

By Mr. PARSONS:

Q. Did not the proceeds in the case of Wilson *vs.* Messler amount to over $90,000? A. I think very likely they did; there were several parcels of land in the city.

Q. Will you state that, in the case of the partition suits which have been mentioned by you, your fees amounted to less than 2½ per cent. upon the gross proceeds of the sales? A. I think in the case of Roberts vs. Wheeler they did. I think the proceeds of the sale were in the neighborhood of $100,000, but I cannot be positive.

Q. Is that the only case? A. My impression is that the fees were less than that in several of these cases, but I cannot remember enough about the cases to say.

Q. What descriptions of references have you received from Judge Cardozo, other than references in partition and foreclosure suits? A. Almost every kind of references; different cases; to take proof in special proceedings; very few references in divorce cases. That is all.

Q. In what character of suits have you, as Referee, given deeds of real estate? A. Foreclosure and partition suits. In the case of Brett *vs.* Roe, which was not a foreclosure or partition suit, I made sales and gave a deed in that case.

Q. With the exception of partition and foreclosure suits, was that the only suit in which you did give a deed as Referee? A. I think so, sir; I cannot think of any other.

Q. Will you now state, if you please, what amount, in 1868, was received by you as compensation as counsel for Receivers, where the Receivership was ordered by Judge Cardozo? A. I cannot do so; I have no means of knowing it. It was quite a considerable sum, I think.

Q. Name some sum which will certainly cover it? A. So far as my recollection serves me or my belief goes at the present time, it was not over $500, probably not $250; but I would not like to say with absolute certainty.

Q. Would it certainly be under $1,000? A. I should say so.

Q. Do you say so? A. As far as my recollection and belief go, I should say that.

Q. Now as to the year 1869? A. I should think it was not more than $1,000 in that case.

Q. Will you state that positively? A. Yes, sir.

Q. Will you state positively that the sum did not exceed $5,000? A. Yes, sir; I think I can do that.

Q. Is there not some sum which you can name with entire safety? A. I think I can state $2,000 with entire safety, and I would almost be willing to state $1,000.

Q. For the year 1869? A. Yes, sir.

Q. State for the year 1870? A. That was the year in which the British Commercial Insurance Company matter was closed up, in which $5,000 fee was received. I have no recollection of having received any other considerable sums, in that capacity, during that year; and I do not believe I did receive $1,000 as counsel for Receiver, outside of that case.

Q. Will you state that you did not receive as much as $5,000, in cases outside of Mooney against the British Commercial Life Insurance Company? A. Yes, sir; I would feel entirely safe in saying that.

Q. Answer as to the year 1871? A. I think I am safe in placing the maximum at $6,000 for that year.

Q. For the year 1871? A. Yes, sir—$6,000.

Q. Have you no book here which will show? A. No, sir.

Q. What was the largest fee during the year 1871? A. The largest fee during that year was in the case of Mitchell *vs.* Reed.

Q. What was the amount of that? A. $3,000.

Q. What did you state was the amount in 1871? A. I think I gave $6,000 as the maximum.

Q. Will you state positively that the sum did not exceed $6,000? A. That is my best belief on the subject.

Q. What other fees have been received by you, during the period from January, 1869, to January, 1872, where the matter from which the fees resulted was ordered to you by Judge Cardozo? A. I have acted as one of the Commissioners in commissions *de lunatico inquirendo* on several occasions; I have also acted as Commissioner for opening of streets.

Q. What is the result as to the amount that has come to you? A. As Commissioner in lunacy cases I do not believe I have made, altogether, $500; possibly I have, but not much more.

Q. During what time? A. Since January, 1868—in four years; as Commissioner of street openings I made a $3,000 fee in one case.

Q. Who taxed the bill of costs? A. I do not know. And in two other cases I made a few hundred dollars. I think that is all I ever made in that branch of business.

Q. Do you mean to state that positively? A. State what positively?

Q. That $3,000 in one case, and a few hundred dollars in other cases, include all that has been made by you in that class of cases? A. Yes, sir.

Q. In what case was the $3,000 received? A. It was the proceedings for the taking of some sixteen lots below the Fifth avenue and Central Park for a public place.

By Mr. TILDEN:

Q. Between Fifty-eighth and Fifty-ninth streets? A. Yes, sir.

Q. You were a Commissioner in that matter? A. Yes, sir.

Q. Who were the other Commissioners? A. I think Mr. Hugh Smith and Judge Hutchings, the Surrogate.

By Mr. PARSONS:

Q. State, if you please, in what street cases you have been Commissioner. A. I was Commissioner in the matter of that public place; also in the matter, I think, of Eighty-eigth street, or some street up among the eighties, between Eighth avenue and the river; I think also in the opening of One Hundred and Forty-fourth, One Hundred and Forty-fifth, and One Hundred and Forty-sixth streets, from the Boulevard to the river, or from the Eighth avenue to the Boulevard, I do not remember which. These were the only cases I can think of in which I received fees.

Q. The question was in the case of what streets have you been Commissioner? A. I was appointed Commissioner for some opening in Seventieth street, on the east side, but I do not know what has become of the proceedings. I rendered some service, but the proceeding has never been carried through. I believe I was appointed Commissioner in one or two other proceedings, which I have never heard anything more of than the fact that I was so appointed—the openings of some streets up town.

Q. Have you now named all the cases that you can remember? A. No, sir; there was also a case for the extension of Madison avenue, from One Hundred and Twenty-fourth street to Harlem river; also for the widening of Broome street; also for the extension of Lafayette Place to Bleecker street. I think that is all that is pending now.

Q. Have you been paid in the Broome street case? A. No, sir, I am sorry to say.

Q. Has your bill been taxed? A. Yes, sir.

Q. What amount? A. $1,200.

Q. Have you been paid in the Lafayette Place case? A. No, sir.

Q. Has your bill been taxed? A. No, sir.

Q. Or rendered? A. No, sir.

Q. In what state is that proceeding? A. The notice to the parties to file their objection has been published, and the time within which they were required to make them has expired, and

notice is now published requiring them to appear before the Commissioners, at a certain time mentioned, to be heard.

Q. The report has not been completed? A. No, sir.

Q. Are there any of these street cases, in which you have been Commissioner, where your bill has been taxed, other than those where you have received your fee? A. I think not, sir.

Q. Are you quite sure about it? A. It is possible they were taxed in the Madison avenue matter, but I think not.

Q. Was the bill rendered in that case? A. No, sir; I am confident, on reflection, that it has not been taxed.

Q. Are you Commissioner, by order of Judge Cardozo, in any matter in respect to the new Central Depot? A. Yes, sir.

Q. State what is the nature of that proceeding? A. There are two such proceedings.

Q. State them to the Committee? A. One is a proceeding to estimate the damage to be paid to the corporation of the city of New York for the taking or using of such portions of the public streets as are occupied by the new depot; the other is a proceeding to estimate the amount of damage to be paid by the Company to Mr. and Mrs. Kipp, who are owners of a block of land in the neighborhood of the depot, which is also used for railroad purposes by the Company.

Q. Has a report been made in either of these cases? A. No, sir.

Q. Are proceedings being taken in either of them? A. They are both in a quiescent state just now.

Q. Have you received a fee or money of any kind in either proceeding? A. No, sir.

Q. What is the estimated value of that block? A. I have taken some testimony on that point, and I imagine we have not got half through.

Q. Can you remember any estimate of it? A. No, sir.

Q. Or about how much? A. I think the parties differ somewhere between $300,000 and $400,000; I would not be certain, but that is my recollection; I mean the difference is about $100,000 between them.

Q. What part have you taken in the proceedings to compel the payment of personal taxes? A. I have occasionally represented clients of mine, who have been summoned to appear and be examined.

Q. Is that all? A. That is all.

Q. Do you mean that you never had anything to do with the proceedings for the collection of personal taxes? A. Never, sir, at all.

Q. How many of such proceedings have you represented? A. Probably half a dozen; I think not more.

Q. Will you be sure that the number was not as many as ten? A. I would not be sure.

Q. Would you be sure that the number was not as many as fifty? A. Yes, sir.

Q. Or twenty? A. Yes, sir; I think I would be safe in saying ten, but I would not like to say so; they were matters that I think, with one or two exceptions, I have never made a dollar out of, and I have not charged my memory with them; I have arranged for clients, without charging, either by attending Court or otherwise.

By Mr. NILES:

Q. Have you received retainers in cases pending in the Supreme Court, where you have not appeared in Court? A. Never, sir; I can answer unqualifiedly, never; I have received retainers in suits in Court which have never gone before the Court.

Q. I mean retainers in suits pending, like other attorneys? A. No, sir.

By Mr. PARSONS:

Q. In stating the amount of fees received by you, as counsel for Receivers, have you embraced all cases of Receivership, not only cases where Mr. Bixby was Receiver, but others? A. No, sir.

Q. In giving your testimony, did you confine yourself to cases where Mr. Bixby was Receiver? A. Oh, you mean to-day; I didn't confine myself; I included all the cases in which I have acted.

Q. In what other cases have you acted as counsel for Receivers? A. I acted as counsel for Alderman Farley, who was Receiver; also for De Witt C. Graham and for Col. Hart.

Q. Always on the appointment of Judge Cardozo? A. I think in Mr. Hart's case he was appointed by Judge Barnard.

Q. In all the other cases it was always on the appointment of Judge Cardozo? A. I will not be sure. There may have been some cases in which Mr. Farley was Receiver where he was appointed otherwise.

Q. Was there more than one case in which Alderman Hart was Receiver and you was counsel? A. No, sir.

Q. More than one case in which Alderman Farley was Receiver? A. Yes, sir; perhaps as many as ten.

Q. Do you remember any case where Alderman Farley was appointed by any other Judge than Judge Cardozo? A. No, sir. But I have an indistinct recollection that there was a case in which he was appointed in the Common Pleas, but I cannot place it now.

Q. Were you counsel for Mr. Farley before you became counsel for him as Receiver? A. Yes, sir. I have been his general counsel for several years.

Q. Were you counsel for him individually before you became counsel for him as Receiver? A. Yes, sir.

Q. Are you quite sure about that? A. I think I can be certain. I became his general counsel in the year 1868. Whether I first acted for him in his individual capacity, or as Receiver, I cannot be absolutely certain; but my impression is that I examined some titles for him before he became Receiver.

Q. Do you remember through whom you became acquainted with him? A. No, sir. I have known him, probably, since 1865.

Q. Have you not been counsel for Andrew J. Smith as Receiver? A. No, sir.

Q. Did you mean to state, in answer to a question put to you by Judge Fullerton upon your first examination, that there had been no money transactions between Judge Cardozo and you? A. That depends on what you call money transactions.

Q. Has Judge Cardozo received money that came from you, or has money been received to the use of Judge Cardozo which came from you? A. Merely in this way: I have occasionally borrowed money from him, and he has occasionally borrowed money from me. I think once or twice I collected some small sums of money for him and gave them to him. I think on one occasion he gave me some money during the Summer, when we were both at Long Branch, to keep for him until he came up to the city, and I gave it to him when he came up to the city some time after. So far as my recollection goes that is all.

Q. Will such transactions appear by your check book? A. No, sir.

Q. Have there been any money transactions between you which will appear by your check book? A. All these transactions probably went through the Bank, but his name does not appear in my check-book at all, and I cannot identify the transactions, probably.

Q. Have you made any recent examination of your check-book on the subject? A. No, sir, not thoroughly. I have not examined the check-book thoroughly.

Q. Have you recently, and if so, how recently, examined the check-book, to see whether Judge Cardozo's name appears there? A. No, sir; I have not examined it with reference to that; but I know it does not, for I always made it a point that it should not; owing to the relations between Judge Cardozo and myself, I did not think it right; I preferred there should be nothing that should be misconstrued in reference to my check-book.

Q. What was the largest amount received by Judge Cardozo from you, in the manner you have stated? A. I don't know sir; I have no idea.

Q. Would it be a large or small amonnt? A. I think the amount he gave me at Long Branch to keep for him was several thousand dollars—$7,000 or $8,000.

Q. Was that amount subsequently returned to Judge Cardozo? A. Yes, sir.

Q. Have you now stated all transactions where money went from you to Judge Cardozo, or him to you, since January 1, 1868? A. All that I can think of.

Q. With the exception of the one transaction where you say that at Long Branch he handed you $7,000 or $8,000, what has been the amount of money in those various transactions? A. I cannot remember—probably varying from quite small amounts up to $1,000 or $2,0000 possibly; I have no recollection on the subject.

By Mr. NILES:

Q. What was the total amount during the four years, in which he was interested in any way, either as a loan or otherwise? A. I have no idea.

Q. As near as you can state? A. Leaving that $7,000 or $8,000 out of the question, I don't believe it has amounted to—I should not like to state; I should think it amounted to $10,000 altogether, but I can't say; it may have been very much less or considerably more; it has been as I have stated, if he asked me to let him have the use of money for a day or longer, I would do it; and in the same way I was under obligations to him.

Q. Have all these transactions been transactions of loans? A. Yes, sir; except as I have stated, where I may have collected money for him once or twice, two or three years ago.

Q. Where money was received by Judge Cardozo from you under either of the circumstances stated, did you draw a check for it? A. Yes, sir.

Q. Can you identify these checks? A. No, sir.

Q. Why not? A. Well, I never drew a check to his order; I always drew them to bearer for the reason I have stated, or I may have given him a check of somebody elses.

Q. You made some entry on the stump of your check-book, did you not? A. Yes, sir; probably a check to my own order and a check to bearer.

Q. Have you no check or memorandum of any kind showing any of these transactions? A. No, sir.

Q. When money was loaned by you to Judge Cardozo, or returned by him, was it returned in one sum, or in what way was it returned? A. I don't remember; generally, I think, in one sum, but there have been cases in which it was not.

Q. Do you remember any cases in which it was returned in more than one sum? A. I have not sufficient recollection to state either one way or the other.

Q. And what is your recollection of the interval of time during which such sums remained before they were returned? A. Generally, but a short time; sometimes it might be a few months.

Q. How was that money returned to you? A. I think almost

always in bills, if not always; there might have been checks, but I don't think there were.

Q. Will your check book show a deposit of such amounts? A. No, sir; merely a deposit of so much money.

Q. Do you mean that when money was lent by you to Judge Cardozo, in every case it was lent in bills? A. Either in bills, or I would exchange a check of some one else's; I think it was always in bills.

Q. Do you remember any case where you exchanged checks with any one else? A. I don't remember any, but I think it is very likely I may have done so.

Q. Have you had anything to do with Judge Cardozo's bank account? A. No, sir.

Q. In no way—making a deposit for him, or in no other way? A. No, sir, never.

Q. Whose check was it that you procured? A. I have no recollection of having exchanged checks in any individual case, but I may have done so.

By Mr. FLAMMER:

Q. You stated that you paid him either in bills, or in some one else's check? A. Yes, sir.

Q. But you don't recollect any case in which you gave a check? A. No, sir.

Q. Do you recollect its being in that form? A. No, sir, but it is possible I may have done so.

By Mr. PARSONS:

Q. Are you still unwilling to permit an examination of your check books? A. Yes, sir, without being directed by what I should regard as competent authority to do so.

Q. Mr. Nathan, will you examine your check-book and see whether on March 17th, 1871, you drew a check for $2,455? A. (After referring to book)—I am afraid I could not tell, sir; that was when I was opening a new check-book, and I have no stump from the 7th to the 18th. I can make that up from my bank account, and let you know that.

Q. What do you mean by saying that you have no stump from the 7th to the 18th? A. The last check in the preceding check-book is March 8th. I presume that I had loose checks before the check-book was bound—before the first part in this book; my clerk who keeps the check-book must have kept the account elsewhere, for I find the first check here is March 18th.

Q. Isn't the stump of the check book in which is the check of the 18th of March, and which would naturally contain the check immediately preceding, torn out of the check-book? A. Yes, sir, it appears to be.

Q. When was that torn out? A. It may never have been bound with the book, but it is not here.

Q. Do you mean to express any doubt as to its having been torn out? A. Well, yes; I don't know whether it has or has not; I am not a judge of book-binding sir, and I don't know.

By Mr. TILDEN:

Q. The balance would show wouldn't it? A. Well there is an account between the end of the other book and the beginning of this. There are checks which don't appear in either.

By Mr. PARSONS:

Q. And one of them is a check drawn on the 17th of March? A. Well any check drawn on the 17th of March would be among them.

Q. Have you the returned check drawn on March 17, 1871? A. I have got the returned checks for each year, those that I have retained; I have only retained those of any value; I have all the checks of 1871 that are of any value to me, and am very likely to have that check.

Q. Won't you look and see if there is a check of March 17, 1871, for $2,455? A. (After looking at the checks) I don't find any check of that date and amount.

Q. Did I understand you to say that in your check book was a memorandum of the checks drawn intermediate the 8th of March, 1871, when the earlier book terminates, and the 18th of March, 1871, which is the first date you have in the check-book produced? A. No; I said that the bank-book would enable me to specify the checks.

Q. Have you produced, under your subpœna, the bundle containing the checks for the period embracing March 17, 1871? A. Yes, sir; I have produced all my return checks for the year 1871.

Q. And do you find no check in that bundle for $2,455? A. I don't sir.

Q. Can you say whether or not there was drawn, on or about March 17th, 1871, by you, a check on the Mechanics' Banking Association for $2,455? A. I think it very likely, sir.

Q. Can you account in any way for the fact that it is not with the returned checks? A. I can only theorize about it, sir, that it was a check of no use as a voucher and I have not kept it. I have only kept my papers that would serve as vouchers.

Q. Do you mean that the checks you produce here are not all your return checks? A. Certainly, I mean that, sir; about every two or three months I go over my checks, and put aside those that are of use as vouchers and destroy the others.

Q. When last did you do that? A. Soon after the 1st of January, I think of the present year.

Q. How soon after the 1st of January? A. I think before the middle of January; I could not remember.

Q. Have you taken any checks from any of these bundles within the last week? A. No, sir, I have not.

Q. When last did you make an examination of the checks which you produce here now? A. I don't think I ever made any of those of the year 1871; within a short time I made an examination of those of the year 1870, to find a voucher.

Q. Within how short a time? A. Well, I guess, within a month.

Q. Was it within a week? A. No, sir.

Q. Was it since your last examination? A. Yes, sir.

Q. Why did you not state then, that it was within that length of time, instead of stating that it was within a month? A. I didn't think of it.

Q. Did you then go all over your checks for the year 1870? A. Yes, sir.

Q. What was the voucher you desired to find? A. It was in regard to a check given to the collector of Internal Revenue.

Q. Did you not know the date? A. No, sir; I didn't know the exact date.

Q. Did you not know the approximate date? A. Yes, sir.

Q. And do you mean to say that, to find that check, it was necessary that you should go over all your checks for the year 1870? A. Yes, sir, they are not arranged neatly in the order of dates; they have been disarranged probably in looking over them to find other vouchers.

Q. Did you take out any checks on that examination? A. No, sir; I took out two checks to the order of the Collector of Internal Revenue, and that was all, ; I put them aside.

Q. And do you mean that there were no other checks withdrawn by you upon that examination? A. I certainly do.

Q. Did you not at that time examine your checks for the year 1871? A. No, sir.

Q. For no other year than than the year 1870? A. No, sir.

Q. Did you at that time see the check in reference to which I have asked you, dated March 17th, 1871, for $2,455? A. Well, as that was not in that year, sir, I should not have seen it. I did not look through the checks of 1871.

Q. Did you see it? A No, sir.

Q. When was it that the occasion arose for your seeing the Internal Revenue checks of which you speak? A. About ten days ago; I think between one and two weeks ago.

Q What was the occasion? A. I got a notice to appear before the Supervisor in regard to income tax.

Q. Don't you mean the Assessor? A. No, sir; I mean the Supervisor.

Q. Did you go to see him? A. No, sir; I sent to him.

Q. Can you fix the date when that was? A. I think the day that I was to appear there was last Monday—last Monday or Tuesday.

Q. Mr. Nathan, will you state that since the first of January, 1871, you have made any examination of your checks for the purpose of eliminating those not needed as vouchers? A. I don't know that I have done so, personally. Yes, I think I have, on one occasion.

Q. Since the first of January, 1871? A. 1871; yes, sir.

Q. Are you pretty sure about that? A. I am pretty sure of it, sir.

Q. When was it? I don't remember. I remember of having done it within a period that would come within that time.

Q. How often do you remember ever to have made such an examination? A. Probably I have two or three times.

Q. Since when? A. I could not say.

Q. Since the beginning of your bank account? A. Yes, sir. I may have done so more frequently than that.

Q. Why did you say, a short time ago, that you did it every two or three months? A. I don't always do it myself. It is generally done every two or three months; perhaps not as often.

Q. You mean there are occasions when it has not been done by yourself? A. Yes; by my clerks.

Q. Name them. A. Daniel Seymour is one of them.

Q. How long has he been your clerk. A. About a year.

By Mr. NILES:

Q. Do you mean that you allow him to examine your checks and keep what checks he chooses? A. Yes, sir. He keeps my check-book; that is, he draws most of my checks by my direction.

By Mr. PARSONS:

Q. Will you look at your check-book and state whether on December 8, 1870, you drew a check for $1,850? A. Yes. sir; I did.

Q. Will you read the stump entry? A. "G. N., $1,850."

Q. Is that all that appears there? A. "Paid bills" at home; I think it is at home; I don't know which it is. I guess I can remember something about that check, sir.

Q. Can you find the check? A. I will see, sir. (After looking at bundle of checks.) Probably not, sir. I very seldom keep checks drawn to my own order.

Q. When did you make that lead pencil memorandum? A. I have no idea, sir; but I suppose probably when I went over the return checks. I have no idea, sir.

Q. Will you state that you did make it at that time? A. No, sir; I would not state that I made it at any time. I will look again to see whether it is my handwriting—yes, I think it is in my handwriting.

Q. Will you state that it was made more than a month ago?

A. Yes, sir. I will state that I don't remember of ever having seen the entry before.

By Mr. NILES:

Q. Did you read the whole entry? A. Yes, sir.

By Mr. TILDEN:

Q. Was that check drawn in bills? Yes, sir; probably. I think I can explain the circumstances of that check.

Q. You may do so. A. It was just in that week that I had moved into the house I had recently bought, and I took a large amount of money to my wife to pay bills for articles that she had bought. She always desired me to bring money, that she might pay bills in cash; that is, for her bills.

Q. In Bank notes? A. Bank notes; yes, sir. She had a constitutional objection to checks. That was when I moved into my house, and I remember having taken home a large sum of money to give to her.

By Mr. PARSONS:

Q. Can you remember any bill that was paid with such money? A. No, sir; she bought a good many ornaments and things of that kind, which I knew nothing about.

Q. Do you mean to say that so large a sum as $1,850 could have been used in the way you state, and you not be able to name any person who received any portion of it? A. Yes, I think it was, sir.

Q. You know no person who received any portion of it? A. Well, I might possibly recollect or find out on reflection, but I don't remember now anything about it more than what I have stated.

Q. What was the house into which you moved at that time? A. 555 Madison avenue.

Q. Will you examine your check-book and state whether on September 13th, 1869, you drew a check for $1,017.50? A. That is in the period covered by the book which I have not got, sir.

Q. Can you produce your return checks for that period? A. [Producing bundle.] Here are my return checks for 1869.

Q. Will you see if there is a check of September 13th, 1869, for $1,017.50? A. I don't find any.

Q. You say that that check is in the period covered by the book which you have not got? When did that book terminate? A. I don't know that that is in that period. I have got the years mixed up here, sir. I guess this book which I hold in my hand is for 1869. [After examining book.] No, this account ends May 13th, 1879.

Q. When does the lost check-book terminate? A. October 6th, 1870.

Q. When does it begin? A. May 12th, 1869.

Q. Will you see whether on April 26th, 1869, you drew a check for $527.50? A. I did, sir.

Q. What is the entry? A. Bearer $527.50, April 24.

Q. Isn't that on the 26th? A. No, sir; that is the 24th.

A. Do you mean to state, or is it a fact, that among the returned checks which you have produced here, you have no check drawn on or about December 8th, 1870, for $1,850, and none on or about September 13th, 1869, for $1,017.50? A. I have no check of September 13th, 1869, for $1,017.50, nor of December 8th, 1870, for $1,850.

Q. You have not here the book which contains the stub entry of any such check? A. No, sir.

Q. The book covering that period being the book which you state is lost? A. Yes, sir.

Q. Did you keep any cash-book in which cash entries were made by you, covering this period? A. No, sir, I never kept a cash-book.

Q. Will you look at your check-book, and state whether on August 19, 1870, you drew a check for $8,707.50? A. That is in the period covered by the lost book, also.

Q. Will you look at your returned checks and see whether you have among the bundle for 1870, a check for that amount? A. (After examining checks.) No, sir, it is not here.

Q. You mean that you have no such check here? A. I do, sir.

Q. Have you any check of that amount drawn during the month of August, 1870, here. A. No, sir.

Q. Did you see any such check when you made the examination of the checks of 1870, within the last week or ten days? A. I have no recollection of having seen it, sir.

Q. Can you account in any way for the failure to find in your bundle such a check? A. Merely by theory, and that it was a check of no use as a voucher.

By Judge FULLERTON:

Q. Do you know that you drew such a check? A. No, sir.

By Mr. PARSONS:

Q. Have you any means of ascertaining what use was made of the money drawn upon any such check? A. No, sir; I don't think of any way. It is possible that a critical examination of all the moneys in my hands at that time might disclose it.

Q. Can you state if you made any entries by which you can ascertain the use to which was put the money drawn upon either of the checks, as to which you have been asked, with the exception of the $1,850? A. No, sir; I would make the same answer which I did to the preceeding question.

Q. Will you look at your book and state whether on January 25th, 1871, you drew a check for $2,000? Q. I did sir.

Q. What is the stump book entry in reference to it? A. "January 25th, 1871, account G. N., bearer, $2,000."

Q. Do you know what was done with the money? A. I haven't the slightest idea, sir.

By Mr. TILDEN:

Q. What does that mean, "account G. N.?" Did you have any other account? A. No; it was drawn by Mr. Seymour; that is his handwriting; when he draws a check for me, he usually writes, "account of G. N."

By Mr. PARSONS:

Q. Do you know from what source came the money, against which that check was drawn? A. No, sir; Mr. Niles has called my attention to a deposit of $2,000, January 28th, "account of G. N."

Q. You would not draw a check against a deposit that had not been made, would you? A. I might; I might draw a check in anticipation.

Q. Could you tell, by looking back in your check-book prior to January 25th, 1871, where came from the money against which that check was drawn? A. No, sir; I could not.

Q. Can you tell from what source came the $2,000 deposited January 28th, 1871? A. No, sir; I could not.

Q. Was it in bills or checks? A. I could not tell that, sir.

Q. Does not your check-book show whether that deposit consisted of bills or checks? A. No, sir; it might, in some isolated instances, but not as a general rule.

Q. Have you any means of ascertaining the use to which was put the money drawn upon that check, or the check itself? A. Not that I can think of, sir; it is possible that reflection might enable me to state, but I cannot think of any other means.

Q. Does not your check-book ordinarily, and as a general thing, show the use for which the check was drawn? A. I presume it does in a majority of cases, but in checks, drawn to my own order, very frequently not; most frequently not.

Q. Are many checks, so large as $2,000, drawn to your own order? A. Not very many; no, sir.

Q. Can you, then, give any explanation of the use to which was put the money that was drawn upon that check? A. No, sir; I could only theorize upon it, and I cannot think of any theory now.

Q Was that check used as a check, or was the money drawn and the money used? A. I could not say as to that, sir.

Q. Do you mean to say to the Committee that you have no knowledge of any kind, and that you cannot think of any means by which you can ascertain the source from which came

the money against which that check was drawn, or the use to which the check was put, or the money drawn upon the check? A. Yes, sir; that would be my answer. It is possible that a reference to my diary might show a transaction of that time, at which there was money paid.

Q. Will you state whether you deposited with the Mechanics' Banking Association (in which were made the deposits shown by that book, and against which were drawn the checks) the moneys that were received by you for Referee's fees, and also for your compensation as counsel for Receiver? A. Some of it.

Q. Where else were such fees deposited? A. In the Guardian Savings Bank.

Q. Can you produce that check of January 25th, 1871, for $2,000? A. If this answer would serve you, sir, it might save time; that being a check payable to bearer, it is more than probable that I cannot.

Q. I prefer that you look and see. A. (After looking for check.) There is no check here for $2,000 in the month of January, sir.

Q. Will you examine your check-book, and state whether, on March 29th, 1870, you drew a check for $660? A. That date is covered by the period embraced in the last check-book.

Q. Will you examine the returned checks and state whether among them is a check, drawn on or about March 29, 1870, for $660, or any check for that amount, drawn in that month? A. (After looking at checks)—It is not here, sir.

Q. Have you any recollection of any such check, or have you any means of ascertaining either the source from which was received any money against which any such check was drawn, or the use to which any such check, or the money drawn upon any such check, was put? A. None that I can think of, sir.

Q. And you have no recollection on the subject? A. No, sir.

Q. Will you examine your check-book and state whether you did not, on January 7, 1870, draw a check for $1,440.50? A. That date is in the interval covered by the last book.

Q. Have you any such return check—$1,440.50, January 7, 1870? A. No, sir.

Q. And is the same answer true as to any such check—that you can neither state from recollection, nor have the means of ascertaining, the source from which either came the money against which any such check was drawn or the use to which the check, or the money drawn upon the check, was applied? A. I make the same answer: I cannot think of any. It is possible that reflection might enable me, in one or more of these cases, to do it, but I think of no way now by which I could do it except by reflection.

Q. Can you recall any books or memoranda which would

throw any light upon any such check? A. No, sir, not unless my diary would.

Q. Have you your diary here? A. I think so. (After searching)—No, sir, I have not my diary for 1870. I don't know what has become of it.

Q. Do you mean that it is lost? A. I presume so. I never make a point of keeping my diaries.

Q. Have you your diary for 1871? A. Yes, sir.

Q. Or for 1869? A. No, sir, I think not.

Q. Look and see if your diary for 1869 is here? A. It is not here, sir; it is probably lost.

Q. How about 1868? A. I have not that, sir.

Q. You kept a diary for 1868? A. Yes, sir.

Q. And for 1869? A. Yes, sir.

Q. And for 1870? A. Yes, sir.

Q. Have you produced here all your books—books kept by you since January 1, 1869, so far as they are now in your possession? A. Yes, sir.

Q. Everything? A. Yes, sir.

Q. And you have no means of ascertaining where are any other books kept that are not produced? A. No, sir. I found, since I was here before, a scrap. When my office was gone over and renovated, as I mentioned on my former testimony, I had a great quantity of old papers put away, and my clerk, in doing so, made a memorandum of the title of proceedings or suits in which the papers were put away, as finished business. I have got that here.

Q. And that is all that you have been able to find since your last examination? A. Yes, sir.

Q. Will you see whether among your returned checks is a check dated on or about December 16, 1869, for $11,493.19? A. There is, sir.

Q. Will you produce it? [Witness produces a check.]

Q. Who is F. Sherman Smith, to whose order that check is drawn? A. He is a lawyer, sir, if I remember rightly; he is the son of ex-Recorder Smith.

Q. Where is his office? A. Chambers street.

Q. With his father, is he? A. I think so; it was in the case of Sherwood against Haynes.

Q. Will you state whether you have among your return checks one drawn on Oct. 25th, 1869, or about that date, for $245? A. No, sir; I don't find any.

Q. Will you say whether among your returned checks are checks, one dated on or about June 2, 1869, for $1,512.85 and one on or about June 15, 1869, for $2,494.50. A. No, sir; I don't find either such checks.

Q. Can you tell, or have you the means of ascertaining the source from which came the money against which was drawn any check drawn on or about June 2, 1869, for $1,512.85 or the

use to which was applied either the check or the money drawn upon the check? A. No, sir.

Q. The same question as to any check drawn on or about June 15, 1869, for $2,494.50? A. The same answer, sir.

Q. And I ask you the same question in regard to any check drawn on or about Oct. 25th, 1869, for $245? A. The same answer.

Q. Will you look at your check-book and see whether you find entered a check drawn on or about April 26, 1869, for $527.50? A. I do, sir. No! it is April 24th.

Q. What is the entry? A. "April 24, $527.50, bearer:" You have already asked me about that.

Q. See whether you find a check drawn January 14, 1869, or thereabouts for $1,155? A. Yes, sir.

Q. What is the entry? A. "Jan. 13, bearer $1,155."

Q. Look for the returned check of that date—that amount. A. I don't find any.

Q. Do you know, or have you the means of ascertaining the use to which was applied either that check or the money drawn upon it? A. Well, as to those checks that appear on the check-book, sir, it is possible that a careful examination of the check-book, for a considerable period before and after the entry might enable me to state—and with reflection upon the subject; but excepting that way, I don't know of any way by which I can locate the transaction.

Q. Have you any means of ascertaining or have you any recollection on the subject of the source from which came the money against which that check was drawn? A. No, sir.

Q. Can you ascertain anything about them from your check-book? A. I might; I could not say that I could, and I could not say that I could not. It may have been money that came from a hundred different sources in my business and it may have been a specific sum.

Q. Is there a deposit made on that date, Jan. 13, 1869? A. Yes, sir.

Q. What amount? A. 672.50.

Q. What was your balance in bank on that day? A. I could not tell you, sir; I kept my check-book myself at that time and kept it very clumsily.

Q. Did not balance it every day? A. No, sir.

Q. What was the last preceding deposit? A. January 9th, account of Hayward against Osberg, $7,790; that was a foreclosure; that deposit of January 13 included the sum of $175 deposited for account of my wife's mother; during a considerable period I had moneys of hers in my hands all the time, more or less, and I used to draw checks for her to bearer; she kept no bank account, and it is more than possible that some of these checks—in fact very probable—that some of these checks concerning which inquiries have been made were drawn to her ac-

count; I always draw her checks to bearer and get the money for them.

By Mr. TOBEY:

Were you Referee in that foreclosure case of Hayward against Osberg? A. Yes, sir. That was the purchase money paid in that case.

By Mr. PARSONS:

Will you ascertain whether or not, October 10, 1868, you drew a check for $450? A. I did, on October 9th, to bearer.

Q. What is the whole entry in the stub of the check book? A. "October 9th, bearer $450."

Q. Have you any knowledge or any means of ascertaining to what use was put either the check or the money drawn upon it? A. No, sir; none except such as I have stated in regard to other similar checks.

Q. Have you any knowledge of the source from which was obtained the money against which the check was drawn? A. No, sir; I suppose it was from my business.

Q. Have you no knowledge on the subject? A. No, sir.

Q. Can you find the returned check? A. No, sir; I do not expect to find any checks payable to bearer among my returned vouchers.

Q. Will you ascertain whether you find a check drawn August 1, 1868, for $425? A. I do.

Q. What is the entry in reference to it? A. "G. N., bearer, August 1st, $425."

Q. And is your answer as to the use to which that check was put and, and the source from which was obtained the money upon which it was drawn the same as in preceding cases? A. I see July 31st I deposited $640 in cash; my best recollection is it was some of that money.

Q. Does "cash" mean bills—bank notes? A. No, not necessarily.

Q. Does it mean checks? A. It might mean either one or both.

By Mr. NILES:

Is there anything to show from what that deposit was derived? A. No, sir.

By Mr. TILDEN:

It would not ordinarily be checks, would it? A. Well, when I kept my check-book, sometimes I would write "cash" and sometimes "deposit."

By Mr. PARSONS:

Q. When you deposited checks did you write "check"? A.

No, sir. When I made a deposit for any trust fund I noted the fact in the check book; otherwise, it was "cash," or "G. N.," or "deposit," or something of that kind.

Q. Can you find any such check? A. No, sir; I find no such check.

Q. There is one other check in regard to which I desire you to testify, and that is a check drawn on or about July 2, 1868, for $800? A. Yes, sir; there was such a check, to bearer.

Q. Can you find the check? A. No, sir.

Q. Are there no checks to bearer, produced by you, among the returned checks here? A. I have not noticed any, sir; I presume not. It is not my practice to keep checks payable to bearer.

Q. Did you notice, in looking through the checks, whether there were or were not any of them drawn to bearer? A. I know that I have not noticed any, sir, in looking over.

Q. You stated that when you had drawn checks, in some cases where the money had gone to Judge Cardozo, that you had exchanged the check with some other person? A. No, sir; I stated I may have done so.

Q. Can you name any person with whom you have ever made such an exchange? A. I don't recollect an instance in which I have exchanged checks for that purpose.

Q. Have you the means of ascertaining any such case? A. No, sir; I don't believe I have, sir.

Q. When you made that statement had you any recollection, or was it your impression, that there had been such a case? A. A vague idea that it had been done, sir.

Q. Who was the person in your mind at that time and in that connection? A. I thought of no one, sir; but I had an idea, a vague idea, that I gave the Judge one, or that there was some such transaction between us. That is all that I remember about it.

By Mr. TILDEN:

Q. How much was it? A. I don't remember, sir.

Q. More than once? A. No, sir, I should think not, but it is possible I may be mistaken.

Q. That is, he cashed it for you—you gave him a check and he gave you bills for it? A. No, sir; what I mean is when I have either loaned money to him, or paid off a loan, or handed to him money collected, that I handed him such a check, or I may not.

By Mr. PARSONS:

Q. From what source have you ever collected money for Judge Cardozo? A. I could not state; I have an idea that once, some time in 1868, or 1869, I collected some money for him, but I don't recollect distinctly.

Q. Have you any recollection of the amount? A. No, sir; I don't

think it was an amount of over a thousand dollars or so, and probably not that.

Q. You state that you are not willing to exhibit your check books, unless by the direction of some competent authority; are you willing to leave them under the direction of this Committee—for examination, I mean? A. For examination by *you*?

Q. If we should so desire, or by some person to be appointed by us? A. Well, if the Committee were to order it, I should be very much inclined to do it, sir, if I thought I had a right to do it. That is the way I feel about it; but I suppose, in that event, I should get an opinion from some lawyer in whose opinion I had confidence, and probably in whose opinion the Committee and yourself would have confidence; but I should hardly feel that I had a right, in regard to some entries there concerning my clients, to have the books submitted to a close examination, on that account. I believe in allowing the members of the Committee to see them; there is no harm done. I should be willing to allow Mr. Tilden to make such examination as he desires, or Mr. Niles, but I should not be willing to do more than that.

Q. Are you willing that an examination should be made by the Committee, or by some person to be employed for that purpose by them? A. Well, I think I should make the same answer, sir, that I should take counsel on the subject, but I should like to, if I have a right to. That is, so far as this inquiry is concerned, I should like to do so.

By Mr. TILDEN:

Q. You related that you had on some occasion given a check to Judge Cardozo, upon which you received the money? A. No, sir; my statement was this, sir: That there had been some money passed between Judge Cardozo and myself, on both sides, in the nature of loans, collections, and in one instance, while living in the country, he had given me money to retain for him, and that none of those transactions appeared by my books in connection with his name, and that I purposely omitted his name from either the checks or the stumps, for the obvious reason that under the relations which existed between him and me I did not care that there should be anything that would be liable to misconstruction, and I stated that when I had given him money in any of those transactions, it was in bills, or that I had a vague recollection that on one occasion I gave him a check, which could not have been my own, for I never would have given him mine.

Q. Did you identify the transactions? A. No, sir; they were at uncertain intervals, and not very numerous.

Q. How many checks do you think you have given to Judge Cardozo? A. I don't know that I ever gave him any; certainly not more than one.

Q. And in how many instances do you think you have paid him in bills? A. Well, that I could not say.

Q. Can't you recall any of the transactions? A. No, sir; not definitely.

Q. On one or more occasion? A. Yes, sir; I should say more than eight or ten, but I could not say how many.

Q. To any large amount? A. I don't think they were any more than—well, not a very large amount; I presume they have been up as far as $2,500.

Q. At a time? A. Possibly.

Q. And what would they be in the aggregate? A. Oh, I could not say, sir.

Q. Do you know in what year they were? A. Running all along during the whole time inquired of, and possibly before.

Q. Well, were those in the cases of money collected for him or money borrowed of him, and which you repaid? A. Both, sir, and money that I loaned to him and he repaid.

Q. Do you remember any specific instance in which you have collected money for him, except in 1868? A. No, sir.

Q. Any during the year 1870? A. No, sir.

Q. 1871? A. I think not, sir.

Q. 1869? A. I think not, sir; possibly I could not locate the time exactly; the transactions were sometime along in 1868 or 1869.

Q. Now, I want to inquire about transactions in which you loaned him money; when were they? A. Well, they have run all along down, and probably run into the last year; I am pretty certain they did.

Q. To what amount have you loaned him money at any one time? A. I could not say, sir; I don't believe they have ever exceeded $2,500; possibly they may have.

Q. Did he repay you those loans? A. Yes, sir; he owes me nothing now, sir.

Q. Have you any record o f herepayments? A. Paid me in cash; I have no record of it.

Q. Paid you in checks or bills? A. I don't think he ever paid me in checks.

Q. Always in bills? A. Yes, sir.

Q. Did you have more than one loan running at a time in his favor? A. Well, I could not say, sir; possibly I may have.

Q. When he repaid you did he repay you the exact amount or repay you on account? A. Sometimes one and sometimes the other; I think generally the exact amount.

Q. Did you lend him money for a long period or a short period? A. Not for any considerable period; never loaned for any particular time; I think that occasionally once or twice, he may have had it for two or three months, and *vice versa*—I may have had it from him for two or three months.

Q. Your accounts balanced, I suppose, when you came to settle them? A. Yes, sir; I never found any considerable difference.

Q. The repayment would appear in some form on the credit side—credited to you in the bank? A. I think so.

Q. Appear there in the form of bank notes, or in the form of checks? A. Yes, sir; if made at one time.

Q. I don't know whether I understood you distinctly whether you had received repayment in bank notes or in checks? A. Well, not in checks, sir. I think generally in bank notes; I don't know but possibly I might have had from him checks transferred to me, but never his own checks.

Q. Do you not think you could look over your accounts during the period for which you have them—the check-book—and identify the cases where you made loans to Judge Cardozo, and also the cases where you received repayment? A. I might, possibly, identify some, probably not all of them. But then I would have to go over it quite carefully, and get, sometimes, the check, to identify it.

Q. You don't think you made any entry that would indicate to you— A. (Interrupting.) Oh, no; I know I could not.

Q. Have you no recollection of any such transaction, specifically, within the last year or two? A. No, sir; I cannot say that I have.

Q. Say if you made him a loan, or if he repaid you for a loan made? A. No, sir; I don't think there have been any such transactions within a year past, but it is possible there may have been.

Q. That would run back during the year 1871? Do you think there was any such during the year 1870? A. Yes, sir.

Q. Do you recollect any one in particular? A. No, sir; I recollect on three or four occasions that I loaned him money—one or two. I think I borrowed once.

By Mr. NILES:

Q. Have you ever had any money transactions with any other persons who are accustomed to receiving references from Judge Cardozo? A. No, sir.

Q. Not any? A. No, sir.

By Mr. TILDEN:

Q. I wish you would look at your check book for the 10th of September. A. What year?

Mr. PARSONS:

1869.

Mr. TILDEN:

Did he look for a check of the 10th of September?

Mr. PARSONS:

About that time, and found no returned check.

Q. I wish you would look again, and see if there is one of the 10th of September, 1869, or about that. A. What is the amount?

Q. $1,017.50. A. No, sir.

Q. Have you your bank book during all this period—your pass book? A. Yes, sir.

Q. Will you let me look at it?

[Witness produces book.]

Q. This is for 1869; have you one before that? A. (Producing book.) *Here* is the one before that.

Q. In the balance between June 20 and July 17, will you be good enough to look at the list of return vouchers and say if there is a check of $800 there? A. Yes, there is; between June 20 and July 17.

Q. In the balance between July 17 and September 5, will you be good enough to see if there is not a voucher for $425? A. Yes, there is.

Q. In the balance between October 1 and October 19, will you be good enough to look and say if there is not a check for $450? A. There is.

Q. Will you be good enough to look at the balance between January 14 and February 1, 1869, and say if among the return vouchers is one for $1,155? A. Yes; there is such a check.

Mr. TILDEN:

What is that of April 26?

Mr. PARSONS:

$527.50.

A. I found that in the check book.

Q. How about the $1,512.85—did you find that in the check book, too? A. I did not.

Q. Will you look in the balance between May 18, 1869, and January 11, 1869, ank see if there is an entry of $1,512.85? A. Yes, sir

Q. And between June 11th and July 19th, $2,494.50 among the return vouchers? A. I find the entry.

Q. Between August 7th and September 23d, 1869, $1,017.50? A. Yes, sir.

Q. And the balance between October 18th and December 3d, a check for $245? A. Yes, sir.

Q. Now in 1870; between January 4 and January 27, 1870, $1,440.50? A. Yes, sir.

Q. Look in your balance between February 18, 1870, and May 4, 1870, and see whether you find a return voucher of $660? A. Yes, sir.

Q. Look in your balance between August 4, 1870, and September 8, 1870, and see whether you find among the return vouchers one for $8,707.50? A. Yes, sir.

Q. Look in your balance between November 14, 1870, and December 9, 1870, and see whether you find among the return vouchers one for $1,850? A. Yes, sir.

Q. Look in your balance between January 18th, 1871, and March 9, 1871, and see whether you find among your return vouchers one for $2,000? A. Yes, sir.

Q. Look in your balance between March 9, 1871, and June 7, 1871, and state whether you find among your return vouchers a check for $2,455? A. Yes, sir.

Q. Then you find that in all those cases you have had returned to you vouchers of these amounts in respect to which you have been interrogated, and have been unable to produce the original vouchers? A. All the cases concerning which you have asked me.

Q. Can you identify the transactions in which you have made these payments? A. No, sir.

Q. Take these fresh ones; to whom did you, on the 17th of March, 1871, pay $2,455? A. I have no recollection.

Q. Did you pay it to Judge Cardozo? Q. It is possible.

Q. To whom, on the 23rd of January, $2,000? A I have no idea. If I recollect rightly, in referring to that on my examination, I found a corresponding deposit a day or two afterwards; they, most probably, related to one another, but I could not identify them in any other way.

Q. December 8, 1870, $1,850; to whom did you make that payment? A. That was made to my wife, to pay bills.

Q. August 19, 1870, $8,707.50: to whom did you make that payment? A. I could not tell.

By Mr. Niles:

Did you make it to Judge Cardozo? A. I think most probably it is money I brought up from Long Branch, and, if it is a check to bearer, it probably is. I think it highly probable that that is the transaction I referred to.

By Mr. Parsons:

Q. What did you do with the money which you say Judge Cardozo handed to you? A. I presume I put it in the Bank.

Q. The Mechanics' Banking Association? A. I presume so.

Q. Was it in large bills or small bills? A. I don't recollect.

Q. You have no recollection whether it was a roll of large bank notes, or whether it consisted of a small number? A. No, sir; or whether it contained checks. I think it did contain checks.

Q. Do you recollect there were any checks received by you on that occasion? A. No, sir; I don't recollect; but my best recollection is there were.

Q. Why did you state, on your first examination, that it consisted of bills, if you think there were checks? A. I didn't state so; I didn't intend to be so understood.

Q. What is your recollection, then, as to the shape in which that amount was? A. My recollection is that it was not very bulky; it may have been checks and it may have been bills, but it was certainly not a roll of small bills or I should have recollected it.

Q. What explanation did Judge Cardozo make for his having that amount of money at Long Branch? A. None whatever, only just for me to take care of.

Q. How long did it remain with you before you returned it to him? A. I don't recollect; it might have been a few days, it may have been a month, or more. I said, before, eight thousand dollars; I did not

think it was eight thousand seven hundred dollars; it is possible it was.

By Mr. TILDEN:

Q. $8,707.50 was the amount of that payment? A. That is the amount of the check; I think it very likely it had reference to that transaction.

Q. Did you return to him the exact amount you received from him? A. That I could not say.

By Mr. NILES:

Q. About how long before this date in August was it that you received that? A. I couldn't say; it may have been a few days, it may have been a month.

Q. It could not have been more than a month? A. I think not.

Q. It must have been not further back than the 19th of July? A. Well, I would not be positive about it.

By Mr. TILDEN:

Q. Were you staying at Long Branch, at that time? A. Yes, sir.

Q. Was the Judge also staying there? A. Yes, sir.

By Mr. NILES:

Q. Now fix it by that—when you went there.

A. I could not recollect; I generally have been in the habit of going there about the last part of June.

Q. What was your habit about going and returning? A. Almost every day.

Q. Are you sure, then, that it was between the last of June and the 19th of August that you received it? A. I think so.

By Mr. TILDEN:

Q. Did the Judge receive the money at Long Branch? A. I don't know; I presume so.

Q. He simply handed it to you, and asked you to take care of it? A. Yes, sir.

Q. You brought it up and deposited it in your bank? A. Well, I will not be certain about that; that must have been so; I recollect keeping it for him.

Q. Did you deposit it the same day you received it? A. I don't recollect.

By Mr. PARSONS:

Q. Why did you not deposit it in Judge Cardozo's bank? A. Well, I don't know; he asked me to take it.

By Mr. TILDEN:

Q. Did he deposit it with you for any further purpose than that of safe keeping? A. That I don't know.

Q. Did he state any object he had in putting it with you? A. I don't recollect that he did.

Q. Did he not say something—didn't he say, "I wish you would take care of that?" A. Something of that kind.

Q. But in your intimacy you took it for granted? A. Yes, sir.

Q. You paid it back some time after; you are confident it was within a month? A. I cannot be confident, but I think it is probable.

Q. Did you pay it back in a check? A. Yes, sir.

Q. One check? A. I think so, I will not be positive

Q. Paid it back in one lump? A. I think so; I cannot say positively.

Q. You think you received it, part in checks and part in bills? A. Yes; and now I think over it; I think I received two amounts which I added together at the same time.

Q. Received the same day, do you mean? A. No, sir; I mean different days.

Q. What were the two amounts? A. I don't recollect; I think the two made up something like eight thousand dollars; I had them both in my hands at that time.

Q. You mean in your hands, physically or on deposit? A. On deposit.

Q. Did you deposit them on the same day? A. I have no recollection; I may have done so; I could not give the interval between. Q. Did you deposit the checks and bank notes together in one deposit? A. I could not recollect.

Q. Were your deposits nearly equal of the two sums you received from him? A. That I could not tell.

Q. You recollect, being together, they made somewhere near eight thousand dollars? A. That is my best recollection.

Q. That is all you remember about it? A. That is all I can say.

Q. Do you recollect receiving any other money within the year 1870 from Judge Cardozo? A. No, sir; not specifically.

Q. Or of paying any other money to him? No, sir; not specifically.

Q. Don't you suppose your accounts, your bank-banks, your check-books, so far as you have them, and your return vouchers, if compared by an accountant, would enable us to see exactly what vouchers have been lost or mislaid? A. I have no doubt of it.

Q. Have you any objection to having a good accountant put on to do that—a man who did not know anything about your private affairs, and who will not inquire into them beyond what is necessary for the purpose? A. I don't know that I have; I should want to think over it. You mean take my books.

Q. Yes; look over your books? A. The bank-books, I suppose, would record all that.

Q. What is your idea about your return vouchers; are there many of them missing, or only these few? A. Oh, there are probably four times as many missing as are here; probably ten times.

Q. You mean four times those we spoke of? A. No, sir; four times the whole number here, or ten times. I have retained only those that were of service to me as vouchers

Q. It would not be a very long job to encounter to compare them.

Mr. Fullerton:

I shall call attention to the fact that hundreds of checks are drawn to bearer, in those books.

By Mr. Niles:

Q. Who else, except your wife, your mother-in-law and Judge Cardozo were furnished money by you through the medium of checks drawn to bearer? A. I have to some of my clients, and to some other persons.

Q. That is, you mean to say you pay out money that you have collected from your business, and are responsible for by checks drawn to bearer? A. No, sir. I mean I have had money given to me by my clients, or for my clients, which I have paid them by check to bearer, and taken receipts for it. I recollect one or two instances of that, but it has not been of frequent occurrence. Where they are acquainted I have drawn money in that way.

Q. That is very rare? A. Well, probably a few instances.

Q. In those cases are you in the habit of putting their names on the backs of the checks so you can identify the person who received it by the check? A. I don't know that I have done so; I may have done so.

Q. What other persons? You say to clients two or three times, and to "some other persons." A. Yes; there are two other persons for whom I have done that once or twice, but not connected in any way with Judge Cardozo, or matters of which he has any knowledge.

Q. Then, as a rule, when you pay out money to persons other than your wife, your mother-in-law, or Judge Cardozo, you pay it by checks to order, or at least have the name on the face of the check? A. Well, I have frequently drawn a check to bearer to other persons. As a general rule, I pay moneys that come into my hands as Referee by checks to order. I often draw moneys for my own use to bearer.

Q. I should have added yourself, your wife, your mother-in-law and Judge Cardozo. All except these three or four? A. Well, I would not say except three or four; there may be more than that. There may be, in the course of the last few years, half a dozen times where I have drawn checks to other persons whom I cannot mention.

Q. During all this time, since the first of 1868, 1st of January, you have been a public officer, have you not? A. Well, I cannot call myself an officer. I have been an employee among the Departments.

Q. You are an assistant? A. Yes, sir.

Q. Have been receiving a salary? A. Yes, sir.

Q. Now, did you ever make Judge Cardozo a loan of money when he had a considerable balance of money on hand or in the bank? A. Not that I know of. I never knew what balance he had in the bank.

Q. You understood, when you made a loan, that he was short of money for the time? A. He asked me if I could let him have so much money for a few days.

Q. You never supposed you made him a loan when he had a considerable surplus? A. I didn't know anything about it.

Q. Do you know where Judge Cardozo kept his bank account during this period? A. No, sir. I know he has kept a bank account at times in the Mechanics' Bank, but how long I don't know.

Q. Were any of those checks which have been referred to in the examination by Mr. Parsons, cut by any other bank than your own, or stamped by any other bank than your own. A. I am sure I don't know.

Q. Have you no memory on that subject? A. No, sir. I don't think I ever observed that in respect of any check which passed through my hands.

Q. I understand you to state that the reason you never permitted Judge Cardozo's name to appear in any check drawn by you in your check-book, check-stubs, was on account of your relation to him. You did not want anything to appear which might be misinterpreted? A. Yes, sir.

Q. Don't you think that, under these circumstances, your check book would have been less likely to be misinterpreted, if you had written, right upon the stub, "Cash collected for Judge Cardozo from John James, for rent of his house in Forty-eighth street," and then entered his name in the check, than where you went around in this way, of drawing checks to bearer, and drawing the bills, or sending and getting them, and carrying the bills to him? A. That might apply to a case where rent was collected; it would not apply to loans.

Q. You think it would apply to a case of rent, where there was no question of integrity, and where a man stood ready to defy creation in regard to the transaction? A. I think likely, in that matter.

Q. Now, when a transaction was so absolutely free from guile that a man could defy the whole world to investigate it, would it not be less likely to create suspicion to write on the margin, precisely as in other cases, where the money came from? A. It might, if the whole book were critically examined, but I don't know even that it would then.

Q. No, but on the check book? A. An item appearing on the check book, on the table, with Judge Cardozo's name, a check for one thousand dollars, might be more readily misinterpreted, I think, than the way which I adopted.

Q. That is not what I asked; I asked, supposing you wrote on the check stub, for cash received from such a man? A. Well, I have answered in respect to a collection of that kind. I think I would agree with you.

Q. Would it not be less liable to misinterpretation, in case of a loan, if you had written on the margin, "To Albert Cardozo, cash loaned, $1,000," and then, when it was repaid, written on your deposit side, "Cash from Albert Cardozo, for money loaned" such a day, than to

leave it in this way? A. I think not, sir; I think the other way a more prudent course; I have not changed my mind on the subject.

Q. You mean to say you began as early as January, 1868, to question with yourself what would be the effect of lending Judge Cardozo $450? A. I think it probable I did, about that time, or as soon as I became the recipient of any considerable amount of patronage at his hands.

By Mr. Parsons:

Q. Will not your check books show the return of any moneys that you have ever loaned to Judge Cardozo? A. Probably they will; in some cases they may not.

Q. Were any loans made by you to Judge Cardozo, returned by checks, or how were they returned? A. I think not by his checks; some of them may have been in other checks.

By Mr. Tilden:

Q. Do you mean every return that he made was in bank notes? A. Most generally, I think.

Q. He paid you in bank notes? A. Most generally, I think.

By Mr. Parsons:

Q. In any case, when you made Judge Cardozo loans, did you procure the bank notes yourself, and then hand the bank notes to him? A. Generally.

Q. How will your check books show the return by Judge Cardozo to you of any amounts you may have loaned to him? A. Not so as to identify them. It would probably be a deposit of cash along with other deposits.

Q. Do you mean by "cash," bills, bank notes? A. No, I mean the cash for the year.

Q. What occasion had Judge Cardozo to borrow money from you? A. I don't know; I never asked him.

Q. Do you mean nothing passed between Judge Cardozo and yourself, except a request by him that you wold loan him money? A. That is all, as far as I recollect, that ever took place on the subject; he might have stated, some time, what he wanted it for, but I have no recollection.

Q. Where have these requests been made to you? A. At all places; at his house, Court, the street, and probably in the country.

Q. How did you send him the money? A. I think I have given it to him myself.

Q. Of course you did not give him the money at the time he made the request? A. No, sir.

Q. Do you mean, then, that you went to the bank and drew the money, or sent for it, and then gave it Judge Cardozo? A. Yes, sir.

Q. Can you recollect any such case having occurred? A. Yes, a good many times.

Q. State in respect to any case, where it was that Judge Cardozo

made application to you? A. I could not give you any particular place. I know he has done it at his house, in Court, and, I think, in the street.

Q. In cases where he made the request at his house, where did you give him the money? A. Probably down town.

Q. Have you any recollectien on the subject? A. I recollect several times having given him money down town.

Q. Where do you mean down town? A. I mean the City Hall.

Q. Do you recollect that those were cases of loans by you to him? A. Yes, sir.

Q. When he returned these loans to you where was the return made? A. Sometimes one place sometimes another.

Q. Have such transactions ever taken place at the Chambers of the Supreme Court, or in the Supreme Cout rooms? A. I think so.

Q. Did Judge Cardozo on any occasion mention any reason, or furnish any excuse for his making application to you for a loan? A. I have no doubt he did, but I don't remember.

Q. Did any money pass in any such transaction from you to him, or from him to you, in this room 13? A. Very likely.

Q. The question is, have you any recollection on the subject? A. No, sir; I have no specific recollection on that subject; but I think it is more than probable it did, as I have met him frequently there.

Q. Did you ever know Judge Cardozo to borrow from any other person. Q. No, sir; I don't know that he has not done so.

Q. Did you hear of his borrowing from any other person? A. No, sir.

Q. Can you fix, with any degree of accuracy, the first occasion when Judge Cardozo borrowed any money from you? A. No, sir; I think there has been no such occasion within a year.

Q. You mean during the year 1871? A. Yes; I should think so; there may have been.

Q. You don't think there has been any such case during the year 1871? A. I don't recollect.

Q. Did you state that you had also borrowed money from Judge Cardozo? A. Yes, sir.

Q. Can you recollect any such case? A. I recollect I did it once or twice, but the amounts I cannot state exactly, or the dates.

Q. Can you fix the year? A. No, sir. I don't think it occurred more than two or three times.

Q. About what amount? A. I think over a thousanddollars.

Q. In those cases did you receive the money by check? A. No, sir.

Q. How did you receive it? A. By bills, or some other person's check. I know I have never had any of his checks.

Q. Did you receive the money on the same occasion of your

making application for the loan? A. No, sir; not that I recollect.

Q. Can you recollect where you did, and how you did receive the money on any application by you to him for a loan? A. No, sir; I cannot say that I can.

Q. Have you any means of ascertaining? A. No, sir; not unless by conversing with him on the subject; he may possibly refresh my recollection.

Q. During all the time covered by these bank accounts, that is to say, from the year 1868, down to and including the year 1871, in fact, did you not invariably have large and considerable deposits to your credit, growing out of your Referee transactions? A. Yes, sir; but not always a considerable sum which I was at liberty to use.

Q. Such amounts were deposited indiscriminately in your bank account, were they not? A. Yes, sir.

Q. And remain for a long time, frequently, would they not? A. Frequently; yes, sir.

Q. Do you mean to say that you never did use such moneys? A. I don't think I ever did, sir, to the extent of a dollar.

Q. What I wish to know is, did you never draw down your bank account below the amount necessary to cover all Referee moneys which you had on deposit? A. Never, sir, that I know of.

Q. Is room 13 open to the public, or is it a room the door of which is shut by a spring lock? A. I don't think there is a spring lock to it.

Q. Is it a room open to the public? A. At times it is, at times it is not?

Q. When you go there how do you get in? A. Try the door.

Q. If it opens, yields, you go in? A. Yes, sir.

Q. But if not? A. Then not.

Q. Frequently, on such occasions, when you knock, is the door opened to you by Judge Cardozo? A. Frequently, yes sir.

By Mr. NILES:

Q. Do I understand you to say that if the door is closed you can open it from the outside without a key? A. I think so; I have never noticed that you could.

Q. Are you sure of that? A. Well, I am sure that when I have supposed it all closed, I have done so, but whether there is a final click, to close it, I don't know; I never supposed there was until you have asked the question now; I don't think there is a spring-lock; I know there are three handles inside; I know I have sometimes a good deal of work to get out after I have got in.

By Mr. PARSONS:

Q. You were counsel for Mr. Bixby, as Receiver of the British Commercial Insurance Company? A. Yes, sir.

Q. Did you conduct the negotiation which resulted in the settlement of the suit? A. No, sir.

Q. Did you participate in it? A. Well, I don't remember particularly, but my best recollection is I had very little to do with it; Mr. Bixby conducted it himself.

Q. What did you have to do with it as counsel for Mr. Bixby in the course of the Receivership? A. I had a great deal to do; a large number of motions were made in the case, and numerous questions came up at all times; it took a great deal of my time.

Q Do you mean motions for permission to re-insure? A. Principally motions relating to that.

Q. Did you conduct any negotiations with, or did you have, ever, occasion to know of any negotiation with Mr. Bristol? A. Yes; I recollect an occasion.

Q. Do you recollect the final settlement? A. I recollect something of it.

Q. What were the sums that were distributed in the final settlement? A. Mr. Bixby got, I think, $12,000, something like that.

Q. Was it not $15,000? A. I think not, according to my best recollection.

Mr. FULLERTON:

The decree has been in evidence.

Mr. NILES:

We have all these amounts, unless it is the sum paid to the agent, I think.

Q. Mr. Bixby got $12,000, you think? A. I think so; and I got $5,000; and Mr. Booth got $5,000; Tracy, Talmadge & Lee got $5,000; Mr. Mead got $5,000.

Q. E. R. Meade? A. Yes, sir, and there was some arrangement between Bixby and the attorneys and agents of the Company, by which he was to, out of his commission, pay a sum, which I think was $5,000, to two of the former agents of the Company.

Q. You mean out of his $12,000? A. Yes, sir.

Q. Were not all the assets which came into the hands of the Receiver, received by him from the deposit with the State Insurance Department, with the exception of a few trifling sums? A. There was one hundred and odd thousand dollars received from there; the residue was received from premiums and other sources; I don't remember the particulars.

Q. All the policies were re-insured, were they not?. A. Yes, sir.

Q. And all the losses were paid? A. Yes, sir; I think so.

Q. And these amounts that you spoke of divided up the balance, did they not? A. No, sir; there was a considerable balance paid over to the agent of the Company, to take home.

Q. How much? A. I couldn't give you the figures; a good many thousand dollars.

By Mr. NILES:

Q. Eleven or twelve thousand dollars, was it not? A. It is very likely; I could not recollect. I know the decree was entered by consent.

By Mr. PARSONS:

Q. Made by Judge Cardozo, was it not? A. I think so.

Q. How long have you known Mr. E. R. Meade? A. I don't know; about five years or more,

By Mr. FLAMMER:

Q. When Mr. Bixby was examined I asked him one or two questions about the execution of a bond in the Astor Fire Insurance Company case; where was that bond executed—the bond for the Receiver? A. It was done down town; whether at his office, or mine, I don't know.

Q. What time of day was it executed? A. I think it was in the afternoon.

Q. Was the bond filled out completely? A. I have no doubt it was; I don't recollect to the contrary.

Q. That was on Saturday, was it not, during the day? A. Yes, sir.

Q. When did you obtain the order? A. Some time on Saturday.

Q. Was it not in the evening? A. No, sir.

Q. Did you not state, on your previous examination, that you obtained it in the evening? A. No, sir; I could not recollect when it was I stated.

Q. Can you recollect now? A. Well, it must have been before the warrant was executed.

Q Have you any recollection that it was before that, or is that simply an inference? A. I recollect it was day-time; I should not recollect that it was in the evening.

Mr. PARSONS:

We desire to express our wish that the Committee shall direct an examination, such as was discussed, of Mr. Nathan's check-books. By an examination, we mean a complete examination with reference to any possible transaction between Judge Cardozo and himself.

The CHAIRMAN said the Committee would take the request into consideration.

Whereupon a recess was taken until 7½ P. M.

EVENING SESSION.

HENRY M. BENEDICT recalled:

By Mr. PARSONS:

Q. Since you were examined, Mr. Shearman has been examined, and in his testimony said something to the effect that a Mr. Wm. H. Morgan was the attorney for the New York Gold Exchange Bank on the 26th and 27th of September, 1869, or about that time. Will you state what the fact is in regard to that matter? A. I think it was on the Saturday or Sunday following the Friday that I was informed that an injunction had been issued to prevent the Bank from settling certain accounts—going on with the settlement of certain accounts. I was not informed of the particulars of that injunction. The effect would be, of an injunction, to prevent all settlements, that is, the chances were it would prevent all settlements as one account works into another, and so all through the ramifications; two or three or four accounts would perhaps extend through a number of others, and prevent a settlement of the entire movement, and I mentioned this to one of the parties that were there, I think it was Mr. Smith; he was urging the Bank to go on and make a settlement.

Q. What Smith? A. Smith, of Smith, Gould, Martin & Co. I had been endeavoring to arrange for a settlement with them, or agreement on their part to protect certain accounts in the Bank in their interest as it was understood, and I told him that this difficulty had occurred; that if that was the case, if an injunction of the Court prevented that we should have to suspend action on the settlements. He said that must not take place. He would see that there was a mandamus issued at once, ordering the officers to go on with the settlement; that would be for the interest of all parties concerned, to have settlements made as promptly as possible, and I approved of that idea or suggestion, and he said: "Come over with me and we will arrange it." I went over with him to the Stevens House. I think Mr. Gould was there, and Mr. Morgan. I did not know Mr. Morgan at all, only he was introduced to me as a proper person to be assigned to represent the Bank for the purposes of that proceeding.

Q. What proceeding? A. To get the issue of this mandamus ordering the officers to go on with the setttement. So I consented that he should make this appearance in Court for me. They said that the Court was very accessible; in about half an hour's time it would be out. It was then late at night, and he received the authorization, I signed it, and that was the last I heard of it until some weeks subsequent he presented a bill of $1,500 for services rendered as counsel. I told him I was not aware of his having rendered any services as counsel; that the proceeding, as I understood, was in the interest of the other party that he represented,

and they would take care of the bill, and after a great deal of cross-firing they took charge of the settlement of that bill. I don't know what was done with it; the Bank, at any rate, never recognized his services, nor did I understand that he was employed in any other way than to represent me in the issue of this mandamus.

Q. Is that the extent of any employment of Mr. Morgan by the Bank? A. That is the utmost extent, to my knowledge.

Q. So far as you know? A. So far as I know, I don't think that he had any intercourse with any other officers or directors of the Bank; I never heard that he did.

Q. It has also been said that some officer of the Gold Exchange Bank, perhaps yourself, went, on the Sunday succeeding the Black Friday, to the Erie Railroad office, and there had an interview with persons present. Is that the fact so far as you are concerned, or so far as you know? A. I never was there in my life, and I don't think that any person on the part of the bank were there, at least I never had any knowledge of it. If they did go, it was without my knowledge.

Q. Did you ever hear that any officer of the bank went to the Erie Railroad office at any time, about that matter? A. I don't think I have.

Q. Who were the executive officers of the bank at that time? A. The cashier, Mr. Rogers, and there were one or two of the directors that were quite active—Mr. Sauzade, Mr. Underhill, and perhaps one or two others that acted in protecting the Bank and consultations in regard to the matters of the Bank. I never heard that either of the gentlemen were present at the Erie office.

Q. Did you ever know or hear of any other person connected with the Bank, urging the appointment of a Receiver, or injunction to prevent clearances? A. No, sir.

Q. Or of any kind in connection with the gold panic of September 24th, 1869? A. I never knew that any of the officers or directors urged or wished the appointment of a Receiver. If they did, it was without my knowledge.

Q. Or in any way facilitated, or had anything to do with it? A. They never had anything to do at all with the appointment of the first Receiver. I am quite confident of that, because they were all surprised at it; and in regard to the second Receiver, it was represented that it was in the interest of the Bank, as it would be enabled to make a compromise of all matters before the Court, which would be very much to the interest of the Bank to carry out, and there was action of the Board of Directors authorizing the consent of the Board to the action as to the second Receiver, which we suppose appears in the minutes of the Bank.

Q. When you left, on your former examination, you were to send to the Committee a statement of the day on which you

ceased to be President of the Bank. I understand that you have sent a note to that effect to the Committee? A. I have, to Mr. Prince, stating the date of my resignation and the particulars in regard to the Directors.

MR. PRINCE states that the paper has been mislaid, and he cannot find it at present.

Q. Can you now state the day on which you ceased to be President of the New York Gold Exchange Bank? A. I did not charge my mind with it. I copied it from the minutes of the Bank, and I think it was about the 16th.

Q. The 16th of October? A. The 16th of October. The circumstances were these. The Directors voted me a leave of absence. I had been pretty much broken down by the business of the preceding two weeks or week, and while the Bank was in the hands of the first Receiver they had a meeting and voted me a leave of absence for ten days, and appointed Mr. Sauzade acting President during my absence.

Q. On what day was that? A. I think that was on the 9th of October. It was about the 9th of October; I won't be positive about the date. I have given that in my communication to the Chairman of the Committee, and can repeat it if it has been mislaid. Then about ten days after that, at a meeting of the Board, I resigned the office of President, retaining the Directorship, which I have continued to hold ever since. The Bank had been broken up in its banking business, and there was not much prospect of its resuming soon, and I declined to act, as it was not necessary for me any longer to remain. I declined to act as President, although I have still continued to hold a Directorship from that time to this, and have had a controlling interest in the bank.

Q. Do you remember, on the evening of Sunday, or the night between Sunday and Monday succeeding the Black Friday, of Mr. Shearman, of the firm of Field & Shearman, Mr. Gould, and other parties, coming down to the Bank? A. I don't remember to have met Mr. Shearman at all; I don't think I know him personally, or have ever been introduced to him. Whether he was there or not, I am unable to say.

Q. Was there any conversation that night between you and Mr. Shearman, you knowing that the person with whom you spoke was Mr. Shearman or was a lawyer employed in the interest either of Gould, or Mr. Smith, or of any of the parties, brokers, whose names have appeared in this investigation? A. I may have had a conversation possibly, but I don't know that I ever spoke to Mr. Shearman in my life. If I had been introduced to him as the lawyer of Mr. Gould, or representing him, I should have remembered it. I don't think any such introduction ever took place, nor do I know Mr. Shearman, or remember to have seen him.

Q. Do you remember any parties coming down Sunday night

to the Bank? A. I think there were parties; a good many parties were there that night in the Bank—twenty or thirty altogether.

Q. Did they come at one time? A. Different times.

Q. Was Mr. Gould among the number? A. I think Mr. Gould was there.

Q. Do you remember whether this Mr. William H. Morgan came down? A. I don't remember to have seen him again after the interview at the Stevens House. I don't remember to have seen him again. He may have been there but I don't recollect it now.

Q. Did Mr. Gould that night make any offer to loan the Bank $75,000, or did anything take place between Mr. Gould and the Bank with reference to $75,000, except what you have stated on your former examination? A. There was no offer to loan the Bank any money. The Bank didn't want any money; they had four or five millions then on hand. The trouble was to find out the owners of the money we had on hand, not to get any more money. I had no conversation at all with Mr. Gould or any one else in reference to loaning the Bank money.

Q. Can you, from memory, state the names of the Directors and of the firms to which they belong? A. No, I cannot, without taking up too much time of the Committee; I can send the papers.

Q. You can state the most of them? A. I cannot remember the exact date of the leave of absence, or of the date I resigned, but I think it was, in the first instance, the 9th of October, and the other the 16th, or about the 16th; and then as to the Directors, I can, I suppose, figure them out in a few minutes. (Figuring.) I have got all but one down here, and that I cannot recollect at this moment.

Q. State, if you please, the names of those of the Directors of the Bank which you can remember, who were such in September and October, 1869, with the names of the firms to which they belong? A. Charles H. Ward, of Ward & Co., Bankers; J. S. Sauzade, of Winslow, Lanear & Co.; P. Greve, of Meyers & Greve, Bankers; William H. Benedict, of Lockwood & Co., Bankers; Jacob Russell, cashier; H. C. Tanner, of Tanner & Co., Bankers; C. H. Harney, of Harney & Searles, Bankers; J. Pierrepont Morgan, of Dabney, Morgan & Co., Bankers; P. M. Meyers, of the firm of P. M. Meyers & Co., Bankers; J. F. Underhill, of Underhill & Haven.

By Mr. OWEN:

Q. Are those firms brokers, buying or selling gold or stocks? A. They all of them buy and sell stocks, except the officers of the Bank.

Q. And did at that time? A. And did at that time, I suppose.

By Mr. FLAMMER:

Q. Did you state that Mr. Gould came down to the Bank that Sunday night—that Mr. Gould was one of the persons? A. I think he was there Sunday night; I think that was the night he was there.

Q. He was there, but you had no conversation with reference to his loaning the Bank any money? A. Not with reference to loaning the Bank money, but with reference to securing the Bank for the gold which he ought to have taken up.

Q. Mr. Gould was there that night? A. I think he was there that night. Whether the negotiation was Saturday night or Sunday night, or both nights, I am not very clear. There was a prolonged negotiation.

Q. But he was there Sunday night? A. I think so.

Q. How many came with him? A. There were three or four parties with him especially, as I remember.

Q. Can you give the names of any of the other persons? A. Henry N. Smith was one; I think Fisk was in there, but I am not positive.

Q. Was he there either Saturday or Sunday? A. I think he was in there on one of those days, or perhaps both.

Q. Are you positive he was there on one of those days, either Saturday or Sunday? A. Yes, sir; I think he was there.

Q. Then you can name Gould, Fisk, and Smith? A. Yes, sir; and there were two or three others, their brokers—one of the principal ones; I forget his name now.

Mr. PARSONS:

Willard? A. Willard; he was there.

Q. Was there any other person with whom you were not acquainted at that time, there in that party? They came together, did they not? A. They were there together.

Q. That is, provided Fisk was there on that Sunday night? A. Yes, sir. This negotiation took place in the private room, near the entrance of the Bank, on New street. We occupied a private room for a time, and there was a great deal of going back and forth between these parties, talking over the different accounts. We sent and got accounts to compare and to adjust, and they selected some five or six accounts, I think, which they considered that they were ready to take care of. I believe I have given this testimony before, in part.

Q. Now, as to my last question. Were there any persons present, of the party that came Sunday night, with whom you were not acquainted then? A. There may have been one or two persons there; I don't remember now.

Q. Were there any other persons, with whom you were acquainted, present at that time, except those you have named? A. I think there were two or three others going in and out. I think that likely Charlie Osborne was in there at one time.

Q. That came with Mr. Gould? I mean of the party that came together? A. I don't know anything about how they came. They were togethor. How they came, I don't know. It was in the Bank, in this room, and these people, that seemed to have a common interest together, were there.

By Mr. OWEN:

Q. Who suggested obtaining a mandamus? A. H. N. Smith.

Q. That was to be a mandamus against the Bank? A. A mandamus to compel the Bank to go on and make settlements.

Q. Why hadn't the Bank gone on and made settlements? A. It had.

Q. Then what did you want a mandamus for? A. From the information that this injunction was out to prevent the officers from acting.

Q. And it was on Saturday or Sunday nignt? A. Either Saturday or Sunday.

Q. Where were the funds at that time? A. The funds were in the office of the Bank, excepting late at night; I took charge of them.

Q. When you went over into New Jersey? A. No. I was ready to go in case of necessity, for I was determined that the four millions of dollars should not go into anybody's hands but the rightful owners, if I could help it, and I thought, as the result proved, that it would go into the wrong hands.

Q. And you favored having a mandamus to compel you to do what you ought to do? A. Yes, sir.

By Mr. FULLERTON:

Q. And what nobody had prevented you from doing? A. There were injunctions issued.

Q. Do you say they were issued? A. I say the information was that they were issued. I don't think they were served.

Q. When did you first hear of the injunction? A. I know that Ashworth hung around the door of the Bank all night long, as they said—as he said—with an injunction to serve when he got a chance.

By Mr. OWEN:

Q. Where is that Stevens Hotel that you speak of? A. It is a little distance from Bowling Green, on the west side of Broadway.

Q. Who did you meet there? A. Mr. Gould, Mr. Smith and Mr. Morgan.

Q. What time of night was that, or day? A. It was in the evening. I cannot recall the time.

Q. How came you to go there? A. Mr. Smith wanted me to go to see this lawyer.

Q. And that authorization was in writing, was it? A. It was.

Q. It was to represent the Bank to have that mandamus ob-

tained? A. That was it; yes, sir. He drew up the writing and I signed it.

By Mr FLAMMER:

Q. Have you a copy of that authorization? A. I believe Mr. Morgan always retained it.

Q. Can you give the wording of that? A. I cannot now.

Q. Was it simply authorizing him to procure a mandamus, or was it a general authorization? A. I don't remember the terms of that paper now.

By Mr. NILES:

Was it a general retainer? A. No, sir. The paper may have been drawn up so as to read that way, but that was not the intention of the act.

Q. I mean what the paper was on its face. A. I cannot give you a copy; it was never in my possession.

Q. Have you no recollection as to the wording of that authorization? A. It was a simple authorization.

Q. Did you draw the authorization? A. I did not.

Q. Who drew it? A. Mr, Morgan drew it.

By Mr. OWEN:

Q. Did he read it to you? A. No, he did not read it to me. I just looked it over and saw it appointed him as attorney, and signed it.

Q. What Morgan? A. William H., I think his name is.

By Mr. FULLERTON:

Q. Who did you understand had moved for getting these injunctions, or this injunction that you feared? A. The name was mentioned at the time, but I don't now remember.

Q. You did not understand it was Fisk, or Gould, or his party, did you? A. No. The impression on my mind was that they did not want that to take place—then, certainly.

Q. They said so, didn't they? A. Yes, sir.

Q. Smith suggested that you should get a lawyer and get out a mandamus to make you go on? A. Yes, sir; that was the position he took that night.

Q. Took you over to the lawyer to accomplish that end? A. Yes, sir; but I think he changed his mind in twenty-four hours.

Mr. OWEN:

Never mind. He did, undoubtedly, but you don't know that perhaps.

Q. When was the injunction served? A. I don't recollect now the exact time. There were three or four injunctions served.

Q. The first one? A Whether the first one was served that

night, or that day, I am not certain, on Saturday. I don't know whether they got access so as to serve it at that time.

Q. Was there one served before the following Wednesday? A. I think there was one served on Monday.

Q. In whose suit? A. I cannot remember now. Those papers were passed over I believe to whoever was acting as counsel of the Bank.

Q. Wasn't it in Ashworth's suit? A. I don't know whether his was first or not.

Q. What is your best recollection upon that? A. I have no recollection as to the order in which they were served. I never saw the papers myself.

Q. Didn't you see the injunction that was served? A. I never saw the injunction.

Q. Did you know what Judge's name was attached to it? A. No, sir; I didn't see it.

Q. Was the injunction served in the case which you had heard of and apprehended? A. Oh, I didn't apprehend anything from that particularly, excepting delay in settlements.

Q. Mr. Ashworth was hanging around the door all night, as you state, to serve an injunction? A. Yes, sir.

Q. Was that the injunction that was first served? A. I don't remember the order in which the injunctions appeared.

By Mr. NILES:

Q. Do I understand you that it was at the solicitation of Gould that you retained Mr. Morgan? A. At the request of Mr. Smith.

Q. Of Smith, Gould & Martin? A. Yes, sir.

By Mr. PARSONS:

Q. And the object was to get a mandamus to compel the Bank to go on against the injunction, which it was apprehended was to prevent action by the Bank, was that so? A. Yes, sir.

DAVID B. OGDEN, sworn:

By Mr. PARSONS:

Q. Are you an attorney and counsellor-at-law? A. Yes, sir.

Q. Have you been occupied for some short time past in connection with this investigation? A. Yes, sir.

Q. Have you been in attendance here for some time? A. Yes, sir.

Q. During the time that the Committee have been in session here? A. Yes, sir.

Q. Do you remember the minute books of Judge Cardozo, that were produced here from the office of the Clerk of the city and county of New York? A. Yes, sir.

Q. Have you made an examination of those books, with a view of ascertaining the number of references ordered by Judge Cardozo, and the persons to whom they were ordered during the years 1868, 1869, 1870 and 1871? A. Yes, sir.

Q. Will you state the result? A. I made the result out on a piece of paper which is here. In the year 1868, Mr. A. B. Weaver had 1 reference, Mr. W. M. Tweed Jr., 31, Mr. W. B. Beamish, 5, Mr. J. J. Lyons, 9, Mr. Gratz Nathan, 92, Mr. A. J. Smith, 29, Mr. J. M. Sweeney, 2, Mr. J. K. Paulding, 1. Whole number 170. In the year 1869, Mr. G. Nathan had 86, Mr. J. M. Sweeny, 1, Mr. A. J. Smith, 34, W. M. Tweed, Jr., 35, J. B. Haskins, 1, D. P. Ingraham, Jr., 2, W. Edelsten, 1. Total 160. In 1870, Mr. G. Nathan, 97, J. J. Lyons, 2, J. H. Coleman, 1, J. M Sweeney, 2, A. J. Smith, 14, W. Bartlett, 1. Total 117. In 1871, Mr. Gratz Nathan, 64, Mr. J. H. Coleman, 1, Mr. A. J. Smith, 4, making a total of 68.

Cross-examination by Mr. FULLERTON:

Q. Did you examine the books to see what references had been ordered by other Judges to different persons? A. No, sir.

Q. You made no examination of that? A. No examination.

Mr. Parsons stated that the remaining witnesses to be examined by them would not probably occupy longer than 12 o'clock to-morrow.

There was one witness, E. D. Benedict, whose attendance they had endeavored to procure, but he avoided a subpœna, and it might be necessary to compel his attendance.

Judge Fullerton said that they were rather surprised at the other side getting through so quickly, and would require a couple of hours in the morning to procure the attendance of witnesses.

Mr. PRINCE said this Committee were not going into a trial of the case.

Mr. FULLERTON—Not at all; but we want to give the whole story.

Adjourned to 12 o'clock to-morrow.

TUESDAY, March 5th, 1872.

Committee met at 12 M. pursuant to adjournment.

Present.—HON. L. B. PRINCE, in the Chair; Messrs. NILES, TILDEN, STRAHAN, and HAYS, Members of the Committee; Messrs. VAN COTT, PARSONS, and STICKNEY, of Counsel for the BAR ASSOCIATION; Messrs. FULLERTON and OWEN, of Counsel for JUDGE CARDOZO.

JACOB M. LAYTON, called by the Committee, sworn; examined by Mr. STICKNEY:

Q. Mr. Layton, what is your occupation? A. Book-keeper for the Mechanics' Banking Association.

Q. What was your position there between the dates of the first of July, 1868, and the end of December, 1871? A. I think that I have been book-keeper about 3½ years or 4 years; 1867, I think, was the year I was made book-keeper. Previous to that I held different positions in the Bank.

Q. Does Mr Gratz Nathan have an account, and for how long has he had one, with the Mechanics' Banking Association? A. He has an account there. He has has had an account since I have been book-keeper—I think all the time I have been in the Bank since 1864.

Q. Have you examined lately, in pursuance of a subpœna served on you, Mr. Nathan's account in the National Mechanics' Banking Association? A. Yes, sir.

Q. Will you state what payments of Mr. Nathan's checks appear in the books of the Bank, as debited to him between the dates of the 1st of July, 1868, and the 31st of December, 1871? A. Well, I cannot give you all the items. The following are items which are charged to Mr. Nathan's account between those two dates:

July 2d, 1868,	$800 00
August 1st, 1868,	425 00
October 10th, 1868,	450 00
January 14th, 1869,	1,155 00
April 26th, 1869,	527 50
June 15th, 1869,	2,494 50
September 10th, 1869,	1,017 50
October 25th, 1869,	245 00
January 7th, 1870,	1,440 50
March 29th, 1870,	660 00
August 19th, 1870,	8,707 50
December 8th, 1870,	1,850 00
January 25th, 1871,	2,000 00
March 17th, 1871,	2,450 00

Q. As I understand you, these are the dates on which the moneys were paid by your Bank on his (Nathan's) account?

A. Those are dates when the checks were charged, the day that they went on the Bank's books.

Q. That would be the day of the payment by the Bank? A. Yes, sir.

By Mr. TILDEN:

Q. The day of the debit? A. The day of the debit; yes, sir.

By Mr. STICKNEY:

Q. Have you any other memorandum with you? A. No, sir.

Q. We shall request you to examine the items of September, 10th, 1869, $1,017.50, and see whether the date is correct, and if it is not we wish you to furnish us with the correct date? A. Well, about that date I think I can give you the information now. September 10th is the correct date. The reason that I say so is this: there was a memorandum brought to me, requesting me to look up that item on the 13th of September, and I found that 13th of September, from whatever source it had been originally taken, was wrong, and it should have been the 10th.

Q. So that is correct? A: That is correct; yes, sir.

Q. What entries in the books of the Bank have you examined to show whether or not these checks which you paid on the dates which you have mentioned, came through the Clearing House? A. The examination of the books, so far as that is concerned, shows that we are in the habit of memorandizing on our debit cash books, where our exchanges cease on our books. They are charged up always first, and at the end of those charges there is a ruling made, and they are marked "exchanges;" checks, after that, come from the first or from the Paying Teller.

Q. Do any of these items that you have mentioned appear in your exchange through the Clearing House? A. They do not.

Q. Then they must have been paid how? A. From all the evidences of our books, we judge they were paid over the counter.

By Mr. TILDEN:

Q. What do you mean by being paid over the counter? A. Paid by the Paying Teller.

Q. In bank notes? A. Yes, sir.

Cross-examined by JUDGE FULLERTON:

Q. Who else has examined the books of the Bank, besides yourself, in regard to these items? A. Well, there have been two gentlemen there, with authority to look into the books.

Q. Who were they? A There were a Mr. Tater, I think—I don't know exactly what his name was; either Tater or Tainter, I think. He brought some authority that brought this, a mandamus.

Q. And who came with him? A. An associate or assistant of his. I made a transfer of the account myself.

Q. Who was the gentleman that came with him? A. Mr. Yelverton, I think.

Q. Who was Mr. Yelverton? A. I don't know who he was, sir.

Q. A stranger to you? A stranger to me; yes, sir.

Q. Was Mr. Tater or Tainter a stranger to you also? A. Yes, sir.

Q. What authority did they bring? A. They brought authority that satisfied the officers of the Bank.

Q. Well that doesn't satisfy me? A. Well, sir, I don't know; I didn't see the exact authority. I know that it was a legal document that they presented to the Cashier.

Q. Didn't you see it? A. I merely saw that there was a paper, but I didn't see what it was.

Q. Those are the only gentlemen you have named, who have examined that account? A. Yes, sir.

Q. Did they examine it with you? A. Yes, sir.

Q. This very account of which you have given testimony? A. Yes, sir.

Q. Did they have any paper with them? A. What kind of paper do you mean, sir.

Q. Did they have any paper? A. Well, they had a transcript that I originally made.

Q. Who compared it with the books? A. I did.

Q. Who with? A. With me.

Q. And that transcript they took away? A. Yes, sir.

Q. Have you given all the debits appearining in this account, during those dates? A. I have.

Q. All the checks that were paid? A. These were not all that were paid against this account, because there were lots of other checks paid against it.

Q. How many others? A. I could not attempt to say, just at present.

Q. Why did you not give all the items charged to him during those respective dates, instead of giving portions of them? A. Because this was all the information I was asked to bring at this time.

Q. Who asked you to bring that? A. The gentlemen I have mentioned before—Mr. Tater or Tainter and Mr. Yelverton.

Q. And you were requested to bring them only the items which you have given in evidence? A. Yes, sir.

Q. How many other items are charged to him during those periods? A. I could not give the definite number of items, but from the books there appear to be items more or less constantly all the time—small items charged in the First Tellers work, as these have been charged.

Q. Give us a rough guess as to the number? A. There is four

years of the account—1868, 1869, 1870, 1871; well, I should say probably there was an everage of nearly one a day.

Q. There would be several hundreds then? A. Yes, sir; it would be 1,200 or in the neighborhood of that.

Q. These items that you have selected, then, being fourteen in number, are items selected from about 1,200 debits to his account? A. Yes, sir.

Q. Why did you select those particular items? A. Because I was requested to do so.

Q. Do you know Mr. Yelverton's first name? A. No, sir.

Q. Ever see him before he came there? A. No, sir.

SAMUEL BOSTWICK, called by the Committee, sworn; examined by Mr. STICKNEY:

Q. What is your occupation? A. Paying Teller of the National Mechanics Banking Association.

Q. How long have you been so? A. About seven years.

Q. Are you first or second Teller? A. First Teller.

Q. And have been so during that time? Yes, sir.

Q. Have you, in obedience to a subpœna of this Committee, examined some of the items of the account of Mr. Gratz Nathan, in your Bank? A. I have examined the items composed, in part at least, of the vouchers in my check-list, paid on certain dates.

Q. Will you state now whether a check of Mr. Nathan's for $800 was paid by him, and if so, when? A. Well, I can only swear to this amount.

Q. You paid on what day, what amount? A. July 2d, 1868, $800.

Q. Did you pay it yourself? A. Of course I paid it myself.

Q. And where? A. At the Bank.

Q. At the Paying Teller's desk? A. Yes, sir.

Q. How—in what? A. I could not tell that.

Q. Did you give a check for it or bills? A. Gave bills, of course.

Q. Will you state the next item you have on your list? A. August 1st, $425.

Q. You paid that in the same manner? A. Yes, sir.

Q. What is the next item? A. October 10th, 1868, $450.

Q. Did you pay that in the same manner? A. Yes, sir.

Q. What is the next item? A. January 14th, 1869, $1,155.

Q. Were all these paid in the same way? A. Yes, sir.

Q. The next item? A. April 26, $527.50; the next item is June 15, $2,494.50; the next is September 10th, $1,017.50; the next item, October 25, $245; the next, January 7, 1870, $1,440.50; the next, March 29, $660; August 19, $8,707.50; December 8, $1,850; January 25, 1871, $2,000; March 17, $2,450. That is all that I have copied off.

Q. That is, they were all paid, I understand you, in the same manner? A. Same manner.

Q. Have you examined the accounts of the Bank to see to what account those payments are charged? A. No, sir; I didn't do that; the bookkeeper has done that.

By Mr. TILDEN:

Q. Do you keep a book on which you enter such payments? A. The First Teller's check-list.

Q. You verified these entries from that? A. Yes, sir.

Q. Are the entries upon that book in your own handwriting? A. No, sir; written by clerks of the Bank.

Q. How, then, do you know that they are correct? A. I know from the statement; I took the statement from the check-list.

Q. What is the check-list? A. It is the vouchers which we pay during the day, entered upon this book to prove my cash.

Q. Do you keep the check list? A. No, sir; we have a check clerk that does that. My cash has got to agree with the check-list.

By Mr. STICKNEY:

Q. In what shape do you make the entry when you pay a check of that kind at your desk, in bills; do you make any entry at the time? A Not at the time; no, sir. They are put down in a book kept for every two hours; every two hours we enter them all up on the check-list. The name is taken on another list, which the bookkeeper keeps. I keep a copy of them all. Then he puts the name down opposite this.

Q. And from that it is entered in the books of the Bank? A. Yes, sir.

Cross-examined by Judge FULLERTON:

Q. Mr. Bostwick, when you paid that $800 check, on July 2, 1868, did you do anything more than to count out $800 to the person presenting the check? A. No, sir.

By Mr. NILES:

Q. Well, you took the check and put it on file on your wire? A. Yes, sir.

By Judge FULLERTON:

Q. You made no entry on any book or any paper? A. No, sir; I could not do it.

Q. You simply stuck it on the wire? A. Yes, sir.

Q. Who took it from the wire? A. The check clerk.

Q. And then you had a list of the checks you had paid? Q. Yes, sir.

Q. Did you do anything more than at the close of the day to add up, or have added up, the amount of the checks paid, and

deduct it from the cash with which you were charged, to see whether the balance was correct? A. Nothing more.

Q. You didn't even add up the list of checks paid? A. No, sir; I could not do that.

Q. The work is subdivided in the Bank? A. Our work is so divided and so heavy I could not do that.

Q. You have no recollection, independently of the check-list, of having paid these checks, have you? A. No, sir.

A. And the check-list is not in your handwriting, you say? A. It is not.

By Mr. NILES:

Q. If there were any mistakes in this check-list would it derange the whole accounts of the Bank? A. It would derange my account. The account has to prove to a penny.

Q. It would also derange the account of the party drawing the checks, would it not? A. Yes, sir.

Q. If there was any mistake anywhere, you would have to follow it up until you found where it was? A Yes, sir.

By Mr. PRINCE:

Q. This check list that you spoke of contains, as I understand it, a list of the persons drawing the checks, and the amounts for which they are drawn? A. Not mine, but the bookkeeper's; mine contains the amounts. Then they are taken from this, and the assistant bookkeeper enters the name and the amounts and his name opposite every check. He enters every check.

By Mr. TILDEN:

Q. What do you call the book upon which he makes those entries? A. Call it a cash book; sometimes a check book. His check book has to agree with the check list and my cash. The whole three have to agree.

By Judge FULLERTON:

Q. Do you say that any error in this check list would necessarily derange your accounts? A. Certainly.

Q. Suppose, instead of putting down on the check list the check of Gratz Nathan for $800, you should put down $700; and suppose, in the next one, instead of $425, you should put $525. Wouldn't his account stand right? A. My cash would balance.

Q. And his account would stand right, wouldn't it? A. It would stand right in the aggregate for the two hours, but the general bookkeeper takes these accounts, and then they would not be right. The general bookkeeper would be the first to open them all, and if the cash was out a penny he would discover it.

By Mr. NILES:

Q. Did you ever make any such mistake as that of entering

one check at too little and another check for exactly the same amount too much, in the same day and in the same account? A. The error has occurred during the day, but a claim would be made. Consequently the cash could not be right.

Q. Do you mean to say that ever, in your whole experience in banking, you made the error of entering one check on the same account at too little, and another check of the same amount at too much, to the same account precisely? A. I don't remember of any such thing.

By Mr. TILDEN:

Q. No two of these checks of which you have given a list are of the same date? A. No, sir.

Q. Then how could it happen, by any possibility, that one of them should be $100 too much, and another $100 too little, and they should be entered in the same account of Mr. Gratz Nathan on the same day, when they are checks of different dates? A. Well, that could not occur.

By Judge FULLERTON:

Q. Do you pretend to say that there is no one day in which two checks were paid, drawn by Gratz Nathan? A. Not of these checks.

Q. Do you recollect how many checks you have paid of Gratz Nathan, on any one day? A. I don't recollect that, but he has drawn small amounts most every day.

Q. Who asked you to examine the account? A. I only had notice this morning. All I could see was in the short time I had before I came up here.

Q. Did you see the checks themselves? A. No, sir. The book is balanced and has gone home. These are charged to his account, which he does not deny.

By Mr. OWEN:

Q. Did you see any other checks charged to Mr. Nathan than those which you have produced during those periods? A. Only these that I have gone over. I didn't make a statement of the whole.

By Mr. STICKNEY:

Q. The vouchers themselves are compared immediately after they leave your hands, are they not, with the items that have been entered in the books? A. Yes, sir.

Q. Any error would be detected then? Then they would be compared with the bank-book of the individual? A. Yes, sir.

By Mr. NILES:

Q. So that three persons must make the same mistake exactly in the course of the day? A. Yes, sir. They have to be called back by another party.

LEWIS G. HAMPTON, called by the Committee, sworn; exam- by Mr. STICKNEY:

Q. What is your occupation? A. A clerk, sir.

Q. Where? A. In the United States Trust Company.

Q. Have you examined the account of the Hon. Albert Cardozo with the United States Trust Company? A. I have, sir

Q. Will you look at the paper now shown you, and see whether that is a correct statement of that account for the periods which it purports to cover? A. Yes, sir; that is a correct statement, as taken from the Ledger, with the exception of these lead pencil marks.

(Paper referred to is marked for identification.)

Cross-examined by Judge FULLERTON:

Q. In whose handwriting is this paper? A. In my handwriting.

Q. When did you make it out? A. I cannot give the date. I think it was last week; I don't exactly remember.

By Mr. NILES:

Q. Within a week or ten days? A. I think it was; yes, sir; within a week or ten days.

By Mr. OWEN:

Q. At whose request did you make it out? A. I don't know at whose request it was made out, sir.

Q. Did you keep the account from which this was taken? A. No, sir; the bookkeeper.

By Judge FULLERTON:

Q. Was any of the original entries in the books from which this account was taken in your handwriting? A. They are not; no, sir. Do you mean in the Ledger?

Q. Yes. A. No, sir.

Q. Who kept the Ledger? A. Mr. Clark, the bookkeeper.

Q. They are transferred to the Ledger from what book? A. From the Journal, deposit-book and the check-book.

Q. Who keeps the Journal? A. Mr. Clark.

Q. The deposit-book? A. Well, it is kept by all the clerks.

Q. And the check-book? By the clerks in general.

Q. Is there anything upon this list which does not appear upon the Ledger? A. Yes, sir.

Q. What part of it? A. The lead pencil marks.

Q. Who put the pencil marks on this memoranda? A. I can't say, sir.

Q. You don't know? A. No, sir.

Q. You don't know, then, that they are correct? A. I don't, sir.

Q. Do you know where they came from? A. I don't, sir.

Re-direct examination by Mr. STICKNEY:

Q. What is the custom—the regular course of business—of your Bank in receiving deposits; are they entered in a pass-book, or what is done with them? A. No, sir; we issue certificates for a great part of our deposits, and we have some few book accounts.

Q. Do you know which this was? A. A certificate account.

Q. A certificate being given for each deposit? A. Yes, sir.

H. B. PORTER, called by the Committee; examined by Mr. STICKNEY:

Q. What is your occupation? A. Bookkeeper in the Mechanics' National Bank,

Q. How long have you been there? A. Some ten years.

Q. Will you look at the paper now shown you and state what it is? A. This is an abstract of the account of Judge Albert Cardozo in the Mechanics' National Bank. It is a copy of the full account as it stands on the Ledger.

Q. Between what dates? A. Between the dates of January 2, 1868 and February 2, 1872.

The paper which was produced by the last witness, Mr. Hampton, was here put in evidence by Mr. Stickney, and marked "Charge 5, A."

The paper produced and referred to by the witness Mr. Porter was also put in evidence and marked "Charge 5, B."

Mr. NILES stated that the pencil memoranda on 5 A were not offered in evidence.

By Mr. TILDEN:

Q. (Showing the witness 5 B.) This, you say, is a copy of the Ledger entries of this account? A. Yes, sir.

Q. Did you make the copy yourself? A. I did, sir.

Q. Did you compare it? A. Yes, sir, and proved it by the Ledger.

A. Are the items of payment just as they stand on the Ledger? A. The items of payment are taken from what we call a debit cash-book. If there are four or five checks come in in the morning they are added up and the aggregate amounts posted on the Ledger. I have taken the items themselves from the debit cash-book.

Q. That is to say you you have decomposed the Ledger entries of payments from the debit cash-book and stated them in detail? A. Certainly; I have gone back of the Ledger, to the debit cash-book.

Q. How about the deposits? Did you decompose those? A. The deposits have been decomposed by the Receiving Teller. They are decomposed in another statement.

Q. In this statement, then, the deposits are as they appear on the Ledger? A. Yes, sir.

Q. And the payments as they appear on the debit cash-book? A. Yes, sir.

Q. Agreeing with the Ledger in that respect? A. Yes, sir.

Q. In the aggregate? A. Yes, sir.

SHEPPARD K. RAYMOND, called by the Committee, sworn; examined by Mr. STICKNEY:

Q. What is your occupation? A. I am Receiving Teller in the Mechanics' Bank.

Q. Will you refer to the paper which you have in your hand, and state whether, on the 3d day of July, 1868, a deposit was made in the account of the Hon. Albert Cardozo, and what it was? A. There was a deposit made of $800 in bills.

Q. Will you state what depost was made to that account on the 7th day of August, 1868? A. There was a deposit of $425 in bills.

Q. On the 12th of October, 1868? A. $450.00 in bills.

Q. On the 15th of January, 1869? A. $1,155.00 in bills.

Q. On the 26th of April, 1869? A. $500.00 in bills.

Q. On the 2d day of June, 1869? A. $1,500.00 in bills.

Q. On the 16th of June? A. $2,350.00 in bills.

Q. On the 13th of September? A. $1,017.00 in bills.

Q. On the 26th of October? A. $245.00 in bills.

Q. On the 8th of January, 1870? A. $1,400.00 in bills.

Q. On the 30th of March, 1870? A. $600.00 in bills.

Q. On the 19th of August? A. $8,700.00 in bills.

Q. On the 8th of December? A. $1,850.00 in bills.

Q. On the 25th of January, 1871? A. $2,015.00 in bills.

Q. On the 18th of March, 1871? A. $2,450.00 in bills.

Q. Now, will you state what deposits, in bills, giving the dates and amounts, were made to the account of Hon. Albert Cardozo in your Bank, from the 1st of January, 1868, down to the 1st of February, 1872? A.:

1868.		
March 5	$ 80 00	in bills.
April 15	900 00	"
May 12	200 00	"
July 3	800 00	"
August 7	425 00	"
October 12	450 00	"
November 13	600 00	"
December 11	300 00	"
1869.		
January 15	1,155 00	"
February 19	300 00	"

March 19	600 00	"
" 31	1,625 00	"
April 26	500 00	"
May 28	125 00	"
June 2	1,500 00	"
" 16	2,350 00	"
July 20	450 00	"
September 4	2,000 00	"
" 13	1,017 00	"
October 6	500 00	"
" 26	245 00	"
December 6	300 00	"
" 16	10,600 00	"
1870.		
January 8	1,400 00	"
February 23	1,450 00	"
March 30	600 00	"
May 5	700 00	"
" 16	800 00	"
" 18	2,000 00	"
June 3	300 00	"
" 15	800 00	"
August 19	8,700 00	"
October 7	3,700 00	"
November 3	700 00	"
December 8	1,850 00	"
" 20	500 00	"
1871.		
January 25	2,015 00	"
March 7	700 00	"
" 11	2,000 00	"
" 18	2,450 00	"
May 11	2,250 00	"
August 31	630 00	"
November 6	1,400 00	"
1872.		
January 24	300 00	"
February 5	700 00	"

By Judge FULLERTON:

Q. They are all in bills? A. They are all in bills.

By Mr. NILES:

Q. And are those all the deposits that were made in bills? A. Those are all.

By Mr. STICKNEY:

Q. Will you state what the paper now shown you is? A. It is a copy of the deposit tickets.

Q. Showing the items, as I understand you, of each deposit made by Judge Cardozo in that Bank for the period which that statement covers? A. Yes, sir; it is an exact copy of them.

By Mr. TILDEN:

Q. Does it contain all the deposits, whether made in bank bills or in checks? A. Yes, sir; separate items of each, with the exception of one or two where the tickets were mislaid.

By Mr. STICKNEY:

Q. And those appear in the account? A. Yes, those I have marked.

(The paper referred to was put in evidence and marked "Charge 5, C.")

By Mr. TILDEN:

Q. Who made out that statement? A. I made it out.

Q. How did you make it out—by inspection of the books? A. The tickets—the deposit tickets themselves.

Q. The original tickets? A. The original tickets.

Q. Are they preserved in the Bank? A. Yes, sir.

Q. Will you mention those cases in which the tickets were lost or mislaid? A. On Feb. 5th, 1868. Amount of deposit on that date, $150; October 12th, 1870, $2,400; October 24th, 1870, $10,640.16; November 25th, 1870, $5,413.58; May 2d, 1871, $1,400. That is all, I believe. Those tickets got mislaid somewhere, and I could not find them in the time that I had.

Q. Do you keep all the deposit-checks of a day in a package together? A. Yes, sir.

Q. So that in order to find the deposit ticket made by one individual you have to look through the whole package? A. Yes, sir.

Q. You found all except those in the cases you have marked? A. I kept these by themselves, and probably in overhauling them at some time these tickets got in with some other month. It would require me to look through eight or ten years, probably, to see where that bunch of tickets went to.

By Mr. STICKNEY:

Q. There are in this account many items of checks on the Broadway Bank; can you state what those were generally for—have you any recollection? A. I think they were city warrants. I don't recollect distinctly.

Q. That is the Bank in which the city accounts are kept, is it? A. Yes, sir.

Q. And the names of the Banks that appear in that statement, what do they indicate? A. They are the names of the Banks on which the checks were drawn that were deposited.

Cross-examined by Judge FULLERTON :

Q. Who made up this statement, "Charge 5, C"? A. I did sir.

Q. At whose request? A. At the request of the Committee.

Q. What Committee? A. I don't remember their names; there was a printed notice sent down to the Bank from a Committee from Albany.

Q. Requesting what? A. Requesting a copy of all the deposit tickets and the transcript of the account of Judge Cardozo.

Q. Who brought it there? A. I don't know the gentleman; it was given to our Cashier and he handed it to me.

Q. Was this original account from which this number 5 is made, kept by you? A. I keep the deposit tickets. I am the Receiving Teller.

Q. You keep the deposit tickets? A. Yes, sir.

Q. And those are what you have examined? A. Yes, sir.

ROBERT YELVERTON, called by the Committee, sworn; examined by Mr. STICKNEY :

Q. Will you state what papers you have now before you? A. Exhibit No. 5, B, account of Albert Cardozo with the Mechanics' National Bank; Exhibit No. 5, C, copy of deposit tickets of Albert Cardozo in Mechanics' National Bank; Exhibit No. 5, A, is the account of Albert Cardozo with the United States Trust Company. I have here, also, an account of Gratz Nathan with the National Mechanics' Banking Association.

Q. What is your occupation? A. I have been a merchant and banker, and in several kinds of business. I have not been in any occupation recently, sir. My last business was in the banking and brokerage business.

Q. How long have you had experience in the keeping and examination of banking and brokerage accounts? A. For the past ten years, more or less.

Q. Will you state whether, at the request of counsel here, you have made an examination of those accounts which are now before you? A. I have, sir.

Q. Have you examined the original account of Mr. Gratz Nathan with the Mechanics' Banking Association, and compared it with the account of Mr. Gratz Nathan which you have in your hand? A. I have, to some extent; yes, sir.

Q. Do you find in the amount an item of July 2, 1868, to Mr. Nathan's debit, of $850? A. Yes, sir.

Q. Now will you examine Judge Cardozo's account in the Mechanics' Bank, of about the same date, and state how that item, or a corresponding item, appears there? A. On the 3d of July, a deposit in the Mechanics' Bank by Albert Cardozo of $800, in bank bills.

Q. Will you state what item you find in Mr. Nathan's ac-

count, to his debit, on or about the 1st of August, 1868? A. $425.

Q. And that appears how, in Mr. Nathan's account? A. As a check paid in bills.

Q. In what form do you find the corresponding entry in Judge Cardozo's account? A. On the 2d of August, a deposit by Judge Cardozo, in bills, of $425.

Q. In Mr. Nathan's account, what item do you find on the 1st of October, 1868? A. A check of $450, paid in bills.

Q. What corresponding item do you find in Judge Cardozo's account? A. October 12, a deposit in bills of $450.

Q. What item do you find on the 14th of January, 1869, in Mr. Nathan's account? A. I find a debit of $1,155; a check, paid in bills.

Q. What corresponding item do you find in Judge Cardozo's account? A. Credited, on the 15th of January, 1869, a deposit of $1,155, in bills.

Q. What item do you find in Mr. Nathan's account on the 26th of April, 1869? A. A debit of $527.50; check paid in bills.

Q. What corresponding item in Judge Cardozo's account? A. A credit of $500, deposited in bills.

Q. On the 2d of June, 1869, what item do you find in Mr. Nathan's account? A. I find in Mr. Nathan's account a check for $1,512.85.

By Mr. NILES:

Q. Paid by whom? A. Paid by the Second Teller.

By Mr. STICKNEY:

Q. What corresponding item do you find in Judge Cardozo's account? A. On the 2d of June a credit of $1,500, deposited to Judge Cardozo's account, in bills.

Q. On the 15th of June, 1869, what item do you find in Mr. Nathan's account? A. Debited with his check, $2,494.50; paid in bills.

Q What is the corresponding item in Judge Cardozo's account? A. Credited to Albert Cardozo, on the 16th of June, $2,350; deposited in bills.

Q. On the 10th of September, what item do you find in Mr. Nathan's account? A. I find a debit of Nathan's check, $1,017.50, paid in bills.

Q. What corresponding item do you find in Judge Cardozo's account? A. Credited, on the 13th of September, $1,017; deposited in bills.

Q. In Mr. Nathan's account, what item do you find 25th of October, 1869? A. A debit of a check, paid in bills, of $245.

Q. What corresponding item do you find in Judge Cardozo's account? A. A credit, on the 26th, of $245, deposited in bills.

Q. On the 7th of January, 1870, what item do you find in Mr. Nathan's account? A. A debit of his check, paid in bills, $1,440.50.

Q. What corresponding item do you find in Judge Cardozo's account? A. On the 8th of January, a deposit in bills of $1,400.

Q. What item do you find in Mr. Nathan's account, 29th of March, 1870? A. A debit, Mr. Nathan's check, paid in bills, $660.

Q. What corresponding item do you find in Judge Cardozo's account? A. On the 30th of March, a deposit in bills by Albert Cardozo of $600.

Q. On the 19th of August, 1870, what item do you find in Mr. Nathan's account? A. A debit of his check, paid in bills, $8,707.50.

Q. What corresponding item do you find in Judge Cardozo's account? A. A credit of $8,700, deposited in bills on the 19th

Q. What item in Mr. Nathan's account do you find under date of December 8th, 1870? A. I find a debit of Mr. Nathan's check, paid in bills, $1,850.

Q. What corresponding item on Judge Cardozo's account? A. On the 8th of December, credited to his account, deposited in bills, $1,850.

Q. On the 25th of January, 1371, what item do you find in Mr. Nathan's account? A. Debited on that date, to his account, his check, paid in bills, $2,000.

Q. What corresponding item on Judge Cardozo's account? A. On the 25th of January, a credit to his account, deposited in bills, $2,015.

Q. On the 17th of March, 1871, what item do you find on Mr. Nathan's account? A. A debit of his check, paid in bills, $2,455.

Q. What corresponding item on Judge Cardozo's account? A. March 18th, credited to his account, deposited in bills, $2,450.

Q. Now, will you refer, in Judge Cardozo's account, to the date of July 3d, 1868, when the deposit of $800 in bills was made, which you have mentioned, and state from that account what was the balance to Judge Cardozo's credit in bank immediately before that deposit was made? A. On the 3d of July, 18 8, Judge Cardozo had a balance in the Mechanics' Bank, $1,346.09.

Q. Was that before this deposit of $800 was made? A. Yes, sir; deposited in bills on the same day, $800.

Q. Refer to the date of the 7th of August, 1868, when the deposit of $425 in bills was made, which you have mentioned, and state what was the balance to Judge Cardozo's credit immediately before that deposit? A. $1,390.19 was the balance to his credit.

Q. Then, will you refer to the item of the 12th of October, 1868, the deposit of $450 in bills, that you have mentioned, and

state what was the balance to Judge Cardozo's credit immediately before that deposit? A. $2,234.42.

Q. Refer to the item of the 15th of January, 1869, a deposit in bills of $1,155, and state what was the balance to Judge Cardozo's credit immediately before that deposit? A. $2,396.29.

Q. Now, will you turn to the account of Judge Cardozo's, in the United States Trust Company, and state what deposit was made by Judge Cardozo there within a few days of the last deposit that you have mentioned? A. On the 21st of January, 1869, a deposit of $1,750 in the United States Trust Company.

Q. And in the account in the Mechanics' Bank do you find a debit corresponding with that? A. On the 22d it was to his debit, $1,750.

Q. Those are the same items, are they? A. Yes, sir.

Q. Then, will you refer to the item of April 26th, 1868, deposited in the Mechanics' Bank to Judge Cardozo's account, the $500 in bills, that you have mentioned, and state what was the amount standing to his credit immediately before that deposit? A. $863.43.

Q. Refer to the item of June 16th, 1869, of $2,350, deposited in bills to Judge Cardozo's credit in the Mechanics' Bank, and state what was the amount standing to his credit immediately before that deposit? A. $3,569.02.

Q. Refer to the United States Trust Company's account, and see what deposit was made by him there on or about that day? A. On the 16th of June, 1869, he deposited there $2,500.

Q. State what corresponding item appears to his debit in the Mechanics' Bank? A. An item of the same amount that went to his debit on the 17th, $2,250.

Q. Then will you refer to the item of Septemper 13th, 1869, of $1,017? A. That is as far as I have calculated.

(The witness was requested to make further calculations, and retired to do so).

Mr. VAN COTT:

Mr. Chairman, on the 29th of February you marked an Exhibit for identification, in the case of Henry N. Smith and others, *vs*, Neilson and others. I desire now to have it marked as an Exhibit.

(Paper referred to marked P. 1.)

Mr. VAN COTT:

When Mr. Hays was examined, he testified that Judge Sutherland had rendered a decision in the case of Bowne *vs.* Leveridge and others, and undertook to state the general purport of that decision. I have now the decree that was entered upon Judge Sutherland's decision, which sets forth his findings, a decree entered before Judge Barrett in that case, 16th of Feb-

ruary, 1872. I desire to put in evidence a printed copy of that decree, and have it marked Specification 10, G.

Mr. PARSONS:

Mr. Chairman, with the exception of two affidavits—I think but two—in the case of Mooney *vs.* the British Commercial Insurance Company, the drafts of which were proved by Mr. Tracy, but the original of which we desire to have from the County Clerk's office, if they can be got, and with the exception of any further papers that we may desire to offer in the Habeas Corpus cases, and the completion of the examination of Mr. Selvester, we close here; and inasmuch as that testimony is all formal, it will be for the Committee to say whether they will proceed now with the case.

WILLIAM C. BARRETT, called and sworn in behalf of Judge Cardozo, testified as follows:

Examined by JUDGE FULLERTON:

Q. You are a lawyer by occupation, I believe, Mr. Barrett? A. I am, sir.

Q. What is your firm? A. Barrett & Redfield.

Q. What was it prior to January 1st, 1872? A. Barrett & Redfield.

Q. Your nephew, Judge George C. Barrett, was then a member of the firm? A. He was, sir.

Q. What connection had your firm with the litigation against the Gold Exchange Bank and the Gold Exchange growing out of the transactions of Black Friday? A. We had, as well as I can recollect, three suits or four; I had not much to do with the mechanical work in my office at that time; my nephew and Mr. Redfield had more to do with it than I had. There was one of those which I atttended to personally.

Q. Which one was that? A. That was the suit of Gillespie *vs.* The Gold Exchange Band, or Board of Brokers, and Smith, Gould & Martin.

Q. On what day was that action commenced? A. Well, I think the date was some time in October; it was in the Court of Common Pleas; I looked at my register this morning, and I think it was the 4th day of October.

Q. Did you obtain an injunction in that case? A. I did, sir.

Q. Who granted that injunction? A. Judge John R. Brady.

Q. Do you find the injunction among the papers you have in your hand? A. I do not, sir.

Q. Do you find the complaint in that case? A. I find a draft of a complaint in the handwriting of Mr. Redfield, and I have here the original complaint that the Board made.

Q. Did you bring the injunction with you? A. No, sir; Mr. Redfield looked for it, he told me he could not find it.

Q. Did you examine the complaint at the time this action was commenced? A. I did.

Q. Did you regard it as a meritorious action? A. I did, sir; I should not have applied for the injunction if I had not; Judge Brady thought so also; he read it over carefully and granted my injunction.

(Complaint put in evidence by Judge Fullerton and marked Q, 1.)

Q. Do you recollect of an action being commenced in your office, in which Ashworth was plaintiff? A. I do, sir.

Q. Did you examine the complaint in that case? A. I did not, sir; my nephew had sole charge of his case; I never read the pleadings.

Q. Do you recollect the action of Osborne *vs.* The Gold Exchange Bank? A. I know there was such an action, but I have no knowledge in regard to it.

Q. Did you participate in anything that was done in reference to that? I think not, sir; that was the only case in which I took any charge whatever—the case I have mentioned.

Q. I see that the name of your firm, Barrett & Redfield, appears as attorneys for Lloyd and others, plaintiffs in the action against the N. Y. Gold Exchange Bank? A. Yes, sir.

Q. Do you recollect of signing a consent in that action, in connection with the action of Osborne *vs.* The Gold Exchange Bank and Carver *vs.* the same? A. Not by me, sir; it was by one of my partners if the name is signed there. I think that was signed by my nephew; I recollect now, sir; I think my nephew signed that.

Q. Do you recollect anything of the approval of that order, by Sauzade, Jorden & Tanner? A. I know nothing about it.

Q. Your nephew would probably know about it? A. It may be, sir.

Q. Did you serve the injunction which you obtained in the Gillespie case from Judge Brady? A. I have no knowledge whatever about it. I presume it was served; all I know about it is having obtained it from Judge Brady,

Q. Do you know on what day it was served, if served at all? A. I have no knowledge at all; I passed it over to Mr. Redfield, or my nephew; my nephew had just returned from Europe; he came on the 1st, I think, and if I recollect rightly this injunction was granted on the 4th of October.

Q. Did you ever obtain any other injunction in any other of the cases? A. I never did.

Q. Do you know whether your firm did or not? A. I have no doubt of it. I have seen the entries in my register, and I have heard them say, but I have no personal knowledge.

Q. Do you know anything of the habits of Judge Cardozo, as

a Judge, in reference to the time when he arrives at the City Hall, and leaves? A. I do, sir.

Q. State whether he is earlier or later than the other Judges? A. Always earlier than any other Judge; usually there at half-past 9, sometimes at 9.

Q. Always accessible to lawyers who want business done? A. Invariably.

Q. Now, in regard to his habits of industry at home—do you know what they are? A. I have no great knowledge; I have frequently been at Judge Cardozo's house at night and invariably find him at work in the library.

Cross-examined by Mr. VAN COTT:

Q. Mr. Barrett, you state that the complaint of Gillespie in the Common Pleas was filed against the Gold Exchange Bank and others. Will you look at the complaint and see whether that is the fact? A. I have not said that of my own knowledge. I do not know anything about it. If I said that the Gold Exchange Bank was a party defendant, I was in error.

Q. Who was President of the Gold Exchange Bank at that time? A. I think the name was Neilson, or Nelson.

Q. The case is described, in the title of the complaint, as the President of the New York Exchange. A. Well, I have no knowledge, except from faint recollection.

Q. Will you state that the Gold Exchange Bank, as a corporation, or the President of the Gold Exchange, as an individual, was a party defendant to that suit? A. I will not; for I do not know anything about it.

By Mr. NILES:

Q. Perhaps you can state, by looking at the complaint, that they were not. A. (After looking at the complaint.) No, sir; neither of them. It was the President of the Board of Brokers.

By Mr. VAN COTT:

Q. Did you ask any relief against the Gold Exchange Bank in that action? A. That I cannot tell without looking at the pleadings. (Looks at complaint). I think not, sir, from a cursory glance at the complaint.

Q. Was Smith, Gould, Martin & Company defendants in that suit? A. They were, sir.

Q. Is it not alleged, in the complaint, that the plaintiff had purchased, on the 24th of September, at the request of Smith, Gould, Martin & Company, a large amount of gold, amounting to an aggregate of $5000,000, as their brokers, and that Gould, Martin & Co., upon a tender of performance on the part of the plaintiffs of their obligations, had refused and failed to perform their corresponding obligations? A. I think so. The complaint so alleges.

Q. And one of the prayers of the complaint was that the plaintiffs recover from that firm? A. The damages.

Q. What sum of money is named as the damages. A. $220,000.

Q. Where was your office at the time that complaint was filed? A. No. 20 Nassau street.

Q. Do you remember where the office of Edward Ensign, Notary Public, was, at that date? A. It was in Pine street—the number I cannot recollect—between Nassau and Broadway.

Q. Near Field & Shearman's office? A. In the same room.

Q. Can you explain how it is that the complaint in this case was verified before Edward Ensign, Notary Public? A. I cannot tell you anything about it. I know nothing about it.

Q. Have you the draft of the complaint? A. I have.

Q. Is it in your handwriting? A. It is not. It is in the handwriting of Mr. Redfield.

Q Do you know whether it is the original draft composed by him, or is it substantially a copy of some other? A. I have no doubt it is an original draft from the beginning to the end.

Q. Did you ever see the complaint filed by Field & Shearman in the case of Willard and others *vs.* the Stock Exchange and the Gold Exchange, in which precisely the same relief is asked against those Exchanges which is asked in this case against them? A. Never.

Q. You never saw those complaints? A. Never, sir.

Q. And you cannot, then, explain the remarkable correspondence in phraseology of the complaint in that case, and the complaint in these? A. I cannot, sir; I know nothing about it.

Q. Can you explain how it is, Mr. Barrett. that a part of the complaint which you produced is printed, and the bulk of it in manuscript? A. I cannot, sir, except that the printed part was cut off from an analogous complaint in other suits in my office. We call these gold suits.

Q. Can you explain how it is that the printed part of this complaint corresponds literally—is a mere transcript of the printed part of the corresponding portion of the complaint in the case of Willard brought against the same Exchange by Field & Shearman? A. I cannot, sir; I do not know anything about it; I know that Mr. Redfield was a partner of Mr. Shearman, who was then, and I believe is still, a partner of Mr. Field; Mr. Redfield can explain how that took place; I know nothing about it.

Q. You know of other suits of the same general tenor brought about the same time; did those suits precede or succeed this Gillespie suit? A. The Bailie suit was subsequent to this suit; a suit that my nephew had the sole management and charge of.

Q. Can you explain how it is that this complaint is verified on the same day, namely, the 29th of Sept., 1869, as the complaint in the case of Willard *vs.* The Gold Exchange Bank? A. I cannot, sir.

Q. And before the same notary? A. I cannot, sir; I know nothing about it.

Q. (Showing witness the paper referred to)—Is that 29th converted into 30th? A. I think it is; that is Mr. Redfield's handwriting; he knows all about these things, while I know nothing about them.

Q. Do you remember whether the plaintiff in this case alleges that he had objected to the two Exchanges enforcing their by-laws and rules in the matter of this litigation against him? A. I think so; I think the complaint so alleges, if I remember rightly.

Q. Will you turn to the complaint, please, and see if that is so? A. If I recollect rightly the complaint alleges "and objects to the Stock Exchange taking any action to enforce the rules of the Gold Exchange."

By Mr. NILES:

Q. He asks you if the complaint alleges that he had objected to that—told them he had objected? A. I think it does not.

By Mr. VAN COTT:

Q. I ask you, as a lawyer, if the plaintiff was a member of an association whose by-laws authorized a certain procedure in the case of its members, and that procedure was not objected to by him in the ordinary course; do you think that he would have a cause of action against the Exchange to restrain them? A. I do not feel called upon to give an opinion upon the subject, as a lawyer, sir.

Q. Did you know the firm of Lloyd & Hamilton? A. No, sir.

Q. Have you ever seen them at your office? A. Not to my recollection; I do not know.

Q. Can you explain how it is that your firm was substituted in the place of Field & Shearman for them in the suit against the Gold Exchange Company? A. I cannot, sir; I know nothing about it.

Q. Did you have any conference with Field & Shearman about this suit? A. Never.

Q. Nor with Lane? A. Never.

Q. Nor with any of these parties? A. No, sir.

Q. How long had you known Gillespie before you brought this suit? A. I had known Mr. Gillespie many years.

Q. Had he been a client of yours before that time? A. I declare I cannot tell; he may have been, but I do not recollect.

Q. How often have you had occasion to apply to Judge Cardozo before 10 o'clock in the morning, at the City Hall, for an order? A. I think never but once, sir; it was for an attachment.

Q. Where did you find him at that time? A. I found him in that large room; I believe they called it their Chambers; on

one occasion there, and on another occasion I found him in room No. 13.

Q. Where did you find him when you applied for the attachment? A. In his Chamber.

Q. Number 13? A. No, sir; I never was in room number 13 but once, and Judge Cardozo was then on the bench there.

Q. How large a room was that, sir? A. I should think a room 12ft. x 12—a small room.

Q. That is a pretty large estimate, is it not? A. Well, it may be; I never was there but once.

Q. Do you remember whether there is the name of any Court on the door or over the door of that room? A. I do not, sir.

Q. Is there a sign on or over the door of all the rooms that are generally used as Court rooms in that building? A. I think that is so.

Q. This room is an exception to that general rule? A. I think so, although I may be wrong; I don't want to speak positively; my impression is that there is no sign over that room, No. 13; no Court; but I might be mistaken; I never was there but once; that was not in relation to an order, it was in relation to a remission of a tax, which Judge Cardozo refused.

Q. Who appeared on the other side in that litigation? A. Mr. Andrew I. Smith.

Q. Did you ever see any other Judge sitting there either in any tax matter or in any other matter? A. I did not; I never was there but once.

By Mr. NILES:

Q. Did I understand you to testify that this printed portion of the complaint was cut off another complaint then existing in your office. A. Such is my impression, sir; I don't speak positively, because I never saw the complaint until it was handed to me by Mr. Redfield to go up and get the injunction.

Q. Did you, prior to the date, September 30th, 1869, ever see any complaint in your office from which this printed portion was an abstract? A. I cannot tell you.

Q. Did you ever have any suit in your office in which the lines erased from this printed portion were a part of the complaint? A. I cannot tell you anything about it, sir; I had nothing to do with the mechanical part of my office—the drawing of the deeds, &c.

Q. Did you, prior to September 30th, 1869, act in unison or in concert with Field and Shearman in matters in which Fisk and Gould or the Erie Railway Company were interested? A. No, sir; never was in my life; I never was interested in any way, shape or form with Mr. Field except as associate counsel in the Susquehanna case, and then I was retained by Walter Church.

Q. When were you retained in that case? A. Well, if I could

call to mind the day that the Church Board of Electors were elected, I could tell.

MR. STRAHAN:

Q. That was 7th September, 1869.

The WITNESS:

On that date I got a telegram from Mr. Church.

By Mr. VAN COTT:

Q. Then from that time on you were acting in harmony with—I do not mean as associate at all—but in harmony with Field and Shearman, were you not?

A. Well, I can only answer that in this way; that I was acting as counsel to the Church Board of Directors in the Susquehanna Railroad.

Q. And were not Field & Shearman acting to sustain that Board? A. I think they were.

Q. Don't you know they were? A. I do, sir.

Q. Now have you any memory of any suit in which these printed clauses appear in the complaint, with which your office had any connection prior to September 30, 1869? A. I have none; Mr. Redfield can tell you all about it.

By Judge FULLERTON:

Q. What was Judge Cardozo doing in room thirteen when you saw him? A. I think he was trying a case, if I recollect rightly.

Q. Do you recollect what case it was? A. I do not; I don't even recollect the counsel who were before him; there were five or six persons in the room; he heard me in this tax matter, decided against me, and I left.

AMASA A. REDFIELD, a witness sworn on behalf of Judge Cardozo, testified as follows; examined by Judge FULLERTON:

Q. You are one of the firm of Barretts & Redfield, attorneys and counsellors-at-law, are you? A. I am.

Q. Had you any connection with the commencement of the suits growing out of the transactions of Black Friday? A. We had.

Q. How many actions did you commence in your office? A. I don't remember the exact number; there were, I think, seven or eight.

Q. Did you personally obtain any injunction in either of those cases or an order appointing a Receiver? A. I did.

Q. In which of the cases? A. The first action that we brought was for Caldwell Ashworth *vs.* The Gold Exchange Bank, and Downing and Bocock, in which we asked an injunction as to the Bank, the appointment of a Receiver of about

$150,000 out of checks, drafts, and money deposited with the Bank by the defendants, Downing and Bocock.

Q. Have you the complaints in that action with you? A. I have the complaint and the injunction order.

Q. To whom did you apply for that order first? A. I applied to Judge Cardozo.

Q. Where? A. At his house, No. 12 West 47th street.

Q. On what day was application made? A. It was on the 26th September—Sunday.

Q. Did you get it? A. Judge Cardozo refused to give us the order. I asked him if he had any objections to my applying to another Judge, as we looked upon it as vital; he said, "No," and I went to another Judge of the Supreme Court the same night for the order.

Q. Did you get it? A. I did.

Q. What Judge was this? A. Judge T. W. Clerke.

Q. What reason did Judge Cardozo give for declining? A. The reason that he gave was that it was on Sunday.

Q. Have you the complaint in that case? A. Here is a copy of the complaint. [Paper produced by witness and put in evidence by Judge Fullerton, marked R 1.]

THE WITNESS:

I don't think Judge Cardozo looked at the papers, though I may be wrong about that.

Mr. TILDEN:

Q. Did you immediately apply to Judge Clerke? A. Within ten minutes.

Q. When was the injunction dated? A. The injunction was dated the 27th; it was about 11 o'clock at night that I applied for that; the Bank was in the possession of a mob, and we thought it should be served as soon after midnight as we could get down there. [Injunction referred to put in evidence, and marked S 1.]

By Mr. STRAHAN:

Q. You say you don't know whether Judge Cardozo looked at the paper or not? Did you state to him the title of the suit, or inform him as to the persons against whom it was brought? A. I told him the general nature of the action and that it grew out of the Black Friday transactions, and that the Bank was in the condition I supposed it to be.

Mr. NILES:

Q. What was that? A. In a hopeless state of disorganization and bankruptcy.

Judge FULLERTON:

Q. And you believed it? A. Yes, sir.

Q. Did you commence any other action against the Gold Exchange Bank in which you obtained an injunction or an order for a Receiver? A. Yes, sir; we brought two actions in the name of Robert Bailie, a broker and banker in Wall street; we brought an action also for Adolphus M. Corn, and others, banker in New street.

Q. Have you the complaint in those actions? A. I have. [Paper produced by Witness.]

Q. Did you obtain an injunction in either of those cases? A. Yes, sir; in both of them.

Q. In the Bailie case did you obtain an order to show cause? A. In the Supreme Court case of Robert Bailie we obtained an order to show cause why a Receiver should not be appointed.

Q. Was that heard in open Court? A. It was.

Q. On what day? A. On the 4th day of October.

Q. And when did you obtain the order? A. The same day—prior to that.

Q. From whom? A. I think from Judge Cardozo.

Q. And before whom was the argument had? A. Judge Cardozo.

Q. Who was heard on the other side? A. I do not know.

Q. Is the paper now shown you a copy of the injunction order in the Baile case? A. Yes, sir; in the Supreme Court.

(Summons and complaint in the Baile case put in evidence and marked T1. Injunction order in the same case put in evidence and marked U1.)

Q You commenced an action for Corn? A. Yes, sir.

Q. In the Supreme Court? A. Yes, sir.

Q. Did you apply for an injunction? A. We did.

Q. To whom? A. Judge Cardozo.

Q. Did he write an opinion? A He did.

Q. Is that memorandum on the back of the paper now shown you—the opinion that he wrote? A. He wrote this memorandum upon the back of one complaint: It is in lead pencil.

[Judge Cardozo read the memorandum, as follows: "I do not see why a petition or notice to the Receiver for instructions will not be proper, and therefore I do not wish to grant an injunction; but, if desired, will give an order to show cause, without a temporary order of injunction. I wish to be careful in these matters, so as to avoid the cry that the Court is unduly interfering with the Bank, and I think the course I suggest is sufficient for your purposes.—A. C."]

Judge FULLERTON:

Q When was that endorsed upon that paper, Mr. Redfield? A. It was endorsed on there while in the hands of Judge Cardozo on our application, or after our application; it was on or immediately after the 13th of October, 1869.

Q. Did you take an order to show cause? A. We did not. We filed a petition for instructions to the Receiver.

[Judge Fullerton put in evidence summons and complaint in the case of A. D. C.———against the Gold Exchange Bank, &c., marked V 1. Also put in evidence petition in the matter as the Receivership of the Gold Exchange Bank, marked W1. Also the order to show cause in the matter of the Receivership granted upon that petition, marked X1.]

Q. Did you obtain an injunction in the matter of Gillespie against Neilson and others, in the Supreme Court? A. Our firm did.

Q. Have you a copy of the complaint here in that case? A. Yes, sir.

(Paper produced by witness. Copy of the proceedings in the case of Gillespie against Neilson, in the Supreme Court, put in evidence by Judge Fullerton and marked Y 1.)

Q. In that case did you obtain an injunction? A. Yes, sir.

Q. Is the paper now shown you that injunction? A. Yes, sir.

(Injunction referred to put in evidence by Judge Fullerton, and marked Z. 1.)

Q. Have you obtained an injunction in other cases? A. I think not; I don't now recollect any.

Q. Did you take any steps to get a Receiver appointed for the Gold Exchange Bank? A. Yes, sir.

Q. When? A. It was the week following the 26th of September, 1869.

Q. State, if you please, what occurred in that respect? A. Mr. Robert Baile, a client of ours, a large dealer with the Gold Exchange Bank and a member of the Gold Exchange, came to our office, I think upon the 27th or 28th of September, to represent the state of the Bank. He represented that the President of it was crazy, or nearly so, and that the thing was in great confusion, and wanted to know what could be done, and wanted to take me with him and introduce me to some of the Directors of the Bank, with a view of bringing some action to straighten it out. I went with him to Mr. Sauzade, who, I think, was Vice-President, and also a Director; we went to Mr. Conrad M. Jordan and Mr. Henry C. Tanner's office, and two or three other brokers and bankers who were creditors of the Bank. Mr. Sauzade explained to them that it was necessary that some action should be taken forthwith. I advised that the remedy was by a Receiver, and somebody suggested bankruptcy proceedings; and I took a statement of all the amounts due the several gentlemen from the Bank, with a view of bringing an action in their names collectively for the appointment of a Receiver. But the creditors got the start of us, and Mr. Brown was appointed before we could get our papers ready.

Q. Field & Shearman got the start of you in the Osborne case? A. Yes, sir.

Q. A case similar to the one you were about to bring? A. I don't know whether it was similar or not; I never saw the papers; it was to accomplish the same object.

Q. You did design, from the facts in your possession, proceedings resulting in the appointment of a Receiver, if you had not been anticipated by Field & Shearman! A. Yes, sir.

Q. You say Mr. Sauzade and Mr. Jordan both consulted with you in respect to that; did they? A. Mr. Sauzade came to our office and I went to Jordan's.

Q. Did they approve of this method that you designed adopting to extricate the Gold Exchange Bank from its difficulties? A. They were hardly in a frame of mind to approve or disapprove anything; they didn't know hardly what to do.

Q. Did they disapprove? A. They did not; on the contrary, without absolutely retaining us to commence such an action, they approved of Mr. Baile taking such measures as his counsel thought necessary towards appointing a Receiver. Mr. Baile was our client.

Q. Did they approve of that after they heard your suggestion? A. I could not be sure as to the conversation, but the general result of the conversation, was that that was the only feasible plan by which to extricate the Bank from its difficulties.

Q. This is a question which I ask only because I want it upon the record, but which I ask with feelings of delicacy. You gave that advice in good faith, in view of the facts which had come to your knowledge? A. I did.

Q. Was any one suggested as a proper person for Receiver? A. Yes. sir.

Q. Who was suggested? A. Mr. Conrad M. Jordan's name was suggested.

Q. In his presence? A. I will not be sure about that.

Q. What is your best recollection? A. My best recollection is that I went to Winslow & Lanier's office, and that it was Mr. Souzade's suggestion that Mr. Jordan was a very proper and competent man. We went down stairs to the Third National Bank, of which Jordan is Cashier, and Mr. Souzade told Jordan, in my presence, that I had advised the appointment of a Receiver of the Bank; my best recollection is that Mr. Souzade mentioned Mr. Jordan's name as Receiver, in his, Jordan's presence.

Q. Did Mr. Jordan and Mr. Souzade express themselves as believing that the Bank was insolvent? A. No, sir; I not say that.

Q. What did they think its condition was? A. They thought its condition was one of very great confusion, owing to the utter incompetency of the officers who had charge of it.

Q. Among whom did they speak of—Mr. Benedict? A. They did; yes, sir.

Q. Do you recollect an order that was entered in the Osborne suit, and in other suits, on the 9th of October, consenting to the displacement of Mr. Brown as Receiver, and substituting Mr. Jordan, and consenting, further, to the payment of certain sums of money to the Receiver, the counsel engaged in the litigation, and to one or more of the customers of the Bank? A. I know of the circumstance of such an order having been entered.

Q. Who signed the name of Barretts & Redfield to that order? A. I could not say without looking at the order.

Q. Did you see the order before it was signed, or after it was signed? A. I could not say. I signed an order on behalf of Barretts & Redfield, in the office of Martin & Smith, who represented at that time the Bank; whether that was the order or not, I cannot now recall.

Q. The order to which you signed the consent, you regarded as a proper one? A. I certainly did.

Q Do you recollect whether the then officers of the Bank signed an approval of the order and consent of the attorneys? A. I know that Mr. Souzade was very prominent in the negotiation, and urged very strongly the signing of the order.

Q. Do you recollect who was instrumental in obtaining the fiat of the Judge upon that order? A. I do not.

Q. Martin & Smith appearded for the Gold Exchange Bank, did they not? A. Yes, sir.

Q. Were your firm substituted as attorneys for the plaintiffs in actions which you did not commence, in the place of Field & Shearman? A. Yes, sir.

Q. Do you know how that occurred? A. I only recall one suit, which was the suit of Lloyd & Hamilton.

Q. State how it occurred. A. Either Mr. Lloyd or Mr. Hamilton came to our office with a blank consent, signed by Field & Shearman, that is, a consent of substitution, not naming the party to be substituted; and Mr. Lloyd or Mr. Hamilton, I've forgotten which one, asked us to take the case. I asked no questions. That was the same day that we signed the consent at Martin & Smith's office, and I understand that the reason Field & Shearman gave the substitution was that they refused to sign the consent.

Q. Prior to that time had you had any interviews or consultations with Field & Shearman in regard to the business growing out of the Black Friday? If so, state what they were, in regard to the commencement of any of these actions of which you have spoken? A. I never had any consultation with either of the members of the firm about any of these suits, either before or after they were commenced, excepting with Mr. Shearman, who was my former partner, in regard to the suit brought by Gillespie. In regard to that suit, he knew of my bringing it.

Q. Did he know of your bringing any other suit? A. No sir.

By Mr. VAN COTT:

Q. I wish you would give me the dates at which the several suits you have mentioned, were commenced, and the order in which they were commenced. A. The first suit was that of Caldwell & Ashworth against the New York Gold Exchange Bank and the National Bank of Commerce. That is an action that I omitted to mention in my direct examination. The summons is dated the 27th of September, 1869; and on the same day another suit by the same plaintiff against the Bank and Dernin & Bocock, as to which I have already testified.

Q. That is the Gold Exchange Bank? A. Yes, sir. We were retained on Sunday, and I drew all the papers on Sunday, and on Sunday night applied to Judge Cardozo for an injunction in the two suits. The papers were served five minutes after midnight. On the 4th of October we obtained an injunction in the Baile suit.

Q. When was the Baile suit commenced? A. The 4th day of October.

Q. Now, the case of Corn? A. Commenced on the 14th of October.

Q. The case of Gillespie, in the Court of Common Pleas, what was the date of that? A. On the 4th of October.

Q. The case of Gillespie, in the Supreme Court? Commenced on the 18th of October.

Q. What was the date of the interview of which you have spoken, with Baile and with the officers of the Gold Exchange Bank, in which the question of a Receiver was considered? A. It was during the week commencing September 27th.

Q. Was it before or after you had commenced the suit of Baile against the Bank? A. It was before.

Q. How long before? A. A very few days.

Q. As near as you can get to it? A. We commenced the Baile suit on the Monday following the Sunday on which we commenced the Ashworth suit, and it was in the meantime.

Q. I want you to give me the date as near as you can. How many days before the 4th of October? A. I am not able to state any nearer than I have.

Q. Was it before or after the 29th of September? A. I think it was before, though I am by no means positive.

Q. Do you recollect when the Receiver was appointed in the Osborne suit? A. I do not.

Q. How many days after this interview did you hear of the Receiver in that suit? A. I could not say.

Q. Had you prepared any papers for obtaining a Receiver before you heard of that? A. I think I had; yes, sir.

Q. Where are those papers? A. They are substantially the

same as the Baile papers, in which we subsequently appointed the same Receiver, Mr. Brown. We went on with that suit.

Q. You understood, at the time you were spoken to, that it was a matter of great urgency, did you not? A. Yes, sir.

Q. When were the papers in the Baile suit prepared on which you did apply for a Receiver? A. The papers on which we subsequently applied for the appointment of a Receiver in that suit were prepared on Friday or Saturday, the 1st or 2d of October.

Q. How many days before that was the interview in which you understood the urgency of the suit for a Receiver? A. I cannot be any more positive than I have been, and I think I have already stated we were not retained to apply for a Receiver at the interviews I have spoken of.

Q. You advised a Receiver? A. I did.

Q. But you were not instructed to obtain a Receiver. A. I did not say that. I say I advised a suit for the appointment of a Receiver of the Bank, but received no instructions to commence such an action at that time.

Q. Your advice, then, was not followed by Mr. Jordan or by Mr. Sauzade on that point? A. No, sir.

Q. Nor by Mr. Baile, until you commenced this suit on the 4th of October to obtain a qualified Receiver? A. Mr. Baile was disappointed at his not having the coöperation of some of his friends—creditors of the Bank—I remember.

Q. You say that Mr. Sauzade and Mr. Jordan did not state that the Bank was insolvent? A. No, sir.

Q. Did not? A. No, sir.

Q. Then did you understand that a Receiver could be appointed because the President of the Bank had "lost his head," as you thought? A. No, sir; that is not the ground. That ground was that four-fifths of the Directors were creditors of the Bank, as I was informed, and that they were all in possession, and every man was grabbing to secure himself.

Q. And that was the ground? A. And that unless it was stopped the Bank would go into irretrievable insolvency.

Q. You did not, in describing the interview between yourself and Jordan and Sauzade, on your direct examination, refer to that at all as the reason why you advised a Receiver? A. I don't recollect to have done so.

Q. Is that ground stated in yonr complaint in the Baile suit as the ground upon which you applied for a Receiver? A. It is stated that the books of account and the affairs of the Bank were in confusion.

Q. No; I ask if that ground is stated in your complaint as the ground of your application for a Receiver in that case? A. Not in the Baile case. It is in the Corn case.

Q. The Corn case, I understand you, was commenced on the 14th of October, after there had been a double and triple and

quadruple Receivership, and after the assets of the Bank had been pretty well gutted out for Heath & Company and Willard; was not that so? A. I know nothing of the condition of the Bank.

Q. Did not you consent to the process of gutting the Bank under that 9th of October order? A. I did not; I never consented to gutting any institution.

Q. Did you consent, in the order of the 9th of October, to the payment of upwards of $30[illegible],000 to Heath & Co., and $75,000 to Willard & Co., and some $30,000 or thereabouts to the lawyers and Receivers? A. I do not remember the precise amounts, but I recollect signing such an order, or that our firm did.

Q. If you did consent to such an order, do you call that process gutting the Bank? A. Not where it is done at the instance and request of the counsel and attorney for the Bank.

Q. Well, we will come to that presently. Now, did you hear Mr. Sauzade, before Brown was appointed Receiver, and before the effort to extricate the Bank from that Receivership, did you hear Mr. Sauzade or Mr. Jordan recommend the appointment of a Receiver, or consent to the appointment of a Receiver? A. I cannot say that I ever did.

Q. Did you hear either of them approve of the order as made for the appointment of a Receiver? A. No, sir; not that I now recollect.

Q. You spoke of being at Martin & Smith's office at the time you consented to this order, the operation of which you do not seem to understand, or remember distinctly; how long were you there at the interview at which you signed that order? A. Fifteen or twenty minutes.

Q. And in that time you consented to the disposal of some $400,000 of the money of the Bank, didn't you? A. No, sir; our consent had been obtained by Mr. Sauzade in the negotiations that he had with Judge Barrett, my partner.

Q. In your presence? A. I was not present.

Q. Had you signed or consented to the order before you went to Martin & Smith's? A. I signed the order at Martin & Smith's office.

Q. And you were there about twenty minutes? A. Yes, sir.

Q. Who else were there? A. Various counsel for the creditors.

Q. Name them? A. I now recall no one.

Q. None of them. A. No, sir.

Q. Can you say who were there representing Willard & Co? A. I cannot.

Q. Or representing Heath & Co.? A. I cannot.

Q. Or representing the Bank? A. I understood Martin & Smith to be representing the Bank.

Q. Didn't you know at the time they were counsel for Heath

& Co. A. I knew that they were counsel for both the Bank and the creditors.

Q. Didn't you know at the time that they were counsel to Heath & Co., to whom they were giving the bulk of the assets in that order? A. I may have known it at the time, for the reason that I went there to perform a mere clerical duty, as I may say; the entire settlement was made with my partner, Judge Barrett, and I went there simply to sign my name to the order; the negotiation which resulted in our consenting to that order was had entirely with Judge George C. Barrett.

Q. That order was entered in three suits, was it not? A. I have no recollection of the form or contents of the order.

Q. Was it entitled in the suit of Baile against the Bank? A. It was, I think; though I am not by any means positive.

Q. I want you to consider whether that order was entitled in the suit of Bailie against the Bank? A. I have no knowledge or recollection on the subject.

Q. The Bailie suit had been commenced before you consented to that order, had it not? A. Yes, sir.

Q. Was any Receiver appointed in the Baile suit? A. Yes, sir.

Q. On the 4th of October? A. I don't remember now whether it was on the 4th.

Q. Won't you look at the order, if you have it there, and see if a Receiver was appointed on the 4th of October? A. [Looking at paper.] Yes, sir.

Q. And this consent was signed by you on the 9th of October, was it not? A. I have no recollection of the day.

Q. Was Brown appointed a Receiver in the Baile suit? A. He was.

Q. He had been previously appointed a Receiver of all the assets of the Bank, had he not, in the Osborne suit? A. Yes, sir.

Q. Yet, on the 9th of October, you signed an order disposing of a portion of the assets of the Bank, without any authorization for it from Mr. Baile? A. I have no recollection of the contents of the order I signed.

Q. Did you consult with Mr. Baile before you consented to that order disposing of the assets of the Bank? A. I did not; my partners may have done so.

Q. Did they, to your knowledge? A. I think they did, for Mr. Baile was in and out of the office.

Q. I ask you whether they did, to your knowledge? A. I have no recollection on the subject.

Q. Will you tell me why, having got an injunction in the Common Pleas, against the two Exchanges, on the 4th of October, in the Gillespie case, you, on the 18th of October, applied for another injunction against these Exchanges, for the same plaintiff, in the Supreme Court? Q. Was there any stain on the

cables of the Common Pleas at that time? A. I don't understand the question.

Q. Was there any loosening of the hold of your injunction in the Common Pleas at that time? A. Not that I am aware of.

Q. Can you then, explain why, on the 8th, you sought an injunction in the Supreme Court, when on the 4th you obtained an injunction in the Common Pleas, which you thought was not loosening its hold, and for the same plaintiff? A. The two actions were very different, indeed. The Common Pleas action was against the Stock Exchange only, and against the firm of Smith, Gould, Martin & Company. The Supreme Court suit was a very different action. The first one was against the President individually and as President of the New York Stock Exchange, and against Wheelock, White & Broadhead, who were, I think, the Arbitration Committee of the Board.

Q. Mr. Neilson was President of the Stock Exchange? A. Yes, sir.

Q. Was the suit against him in his personal capacity? A. Individually, and as President.

Q. Then it was against him individually, and against the Stock Exchange, suing him as President of a joint stock company? A. Yes, sir.

Q. What was the other suit? A. The other suit was against Neilson as President of the Stock Exchange, and Townsend Cox, as President of the Gold Exchange, and the Arbitration Committee of the two Exchanges.

Q. Leaving out the firm of Gould & Martin? A. No; our debtors there were George H. Baine, Thomas P. Akers, and George Phipps.

Q. Did you allege in the complaint either of those two cases that you had objected to the Exchanges, or to their arbitration committees, or to their proceeding under their rules and by-laws? A. I do not now recall that we did, or whether we did.

Q. I understood you to suggest that the suit in the Common Pleas was brought at the instigation of Field & Shearman? A. No, sir.

Q. They had nothing to do with it? A. I was introduced to Mr. Gillespie by Mr. Shearman. Mr. Gillespie retained us, and I drew the complaint myself, and have the original complaint here now in Court. Mr. Gillespie employed Judge Barrett as his counsel to argue the case, and try it before Judge Ingraham in the Supreme Court, and before a Judge in the Common Pleas; I paid him a retainer.

Q. Where did that introduction take place? A. I think it was at the Erie office.

Q. Was it not substantially arranged there that such a suit should be brought? A. No, sir; it was not. I can repeat almost the precise language used to me on the occasion.

Q. Will you explain how you happened to be there? A. I was telegraphed for by Mr. Shearman.

Q. And he introduced you to Mr. Gillespie. Did you do any other business for him, besides bringing this suit? A. No, sir.

Q. You brought it immediately? A. Yes, sir.

Q. Field & Shearman were rather unemployed about that date, were they not? A. Mr. Shearman told me that the claim was was against Smith, Gould, Martin & Company, and he could not appear upon both sides.

Q. And would like to retain counsel? A He did not say so; but as they could not act against Gillespie, he advised Gillespie to retain Barretts & Redfield.

Q. It was a matter of your personal knowledge that that firm was very idle about that time, had nothing to do? A. I have no personal knowledge at all in relation to it.

Q. Didn't you know that they were so little employed that they did copying for the offices down town? A. No, sir.

Q. Will you tell me whether the written complaint served in the Gillespie case in the Common Pleas was or was not in the writing of a clerk in their office—whether that copy was not made in their office? A. No, sir; it was not.

Q. Look at the back; in whose handwriting is that? A. I could not say; part of it is in mine.

Q. In whose handwriting is the body of the writing on the back? A. I couldn't say; it was not there when we served it.

Q. Look at the face of it, and see in whose handwriting you think the body of the complaint is? A. It is in mine, the greater part, and the balance of it is in the handwriting of my clerk.

Q. Will you look at this order in the Gillespie case in the Supreme Court, and tell me if you know whose handwriting that is? A. Yes, sir.

Q. Whose? A. This is in the handwriting of William Maloy, who was formerly my clerk, but who is now in the employ of Field & Shearman.

Q. Was he not in the employ of Field & Shearman at that time? A. Yes, sir.

Q. Will you explain to me how it happened that the copy of the injunction served in the case of Gillespie is in the handwriting of a clerk in Field & Shearman's office? A. It was made there for the purpose of getting a press copy, as we had no press in our office at that time; and Mr. Maloy was under favor to me personally, and I asked him to prepare it; they had a much larger force of clerks there at that time than we had.

Q. Will you tell me where you got the printed matter in that complaint of Gillespie, in the Common Pleas? [Exhibit Q 1.] A. I have no recollection; but I have no doubt I obtained it from Field & Shearman.

Q. Then you think Field & Shearman furnished you with the

material for a suit against their clients, Gould & Martin? A. I know they did not.

Q. Then, you were furnished those at their office? A. I asked Mr. Shearman as a favor to me to let me see some of his complaints, that I might have a hint towards drawing a complaint in a class of cases with which I was not familiar.

Q. You think you rather "got the complaint" from Shearman? A. I do not.

Q. I understand that the relief you asked in the case of Baile against the Bank was limited to certain checks and other deposits in the Bank claimed to be the property of the plaintiff? A. That is the Ashworth case.

Q. And you got that Receiver at what time? A. We never had a Receiver in the Ashworth case.

Q. You applied to Judge Cardozo in that case, I believe? A. Yes, sir.

Q. You think Judge Cardozo did not look at the papers? A. I don't think he read all the papers. I told him all their contents, and what we wanted.

Q. He did not object to hearing a statement of the case on Sunday, did he? A. He could not very well refuse to hear a gentleman's story.

Q. What, a statement of a law suit on Sunday, if he had scruples about doing business on Sunday? A. I told him in about three minutes what the suit was about.

Q. He became satisfied upon your statement that there was no cause for the relief you asked? A. No, sir; he did not state so, and I have not sworn so. He told me that he did not want to sign an injunction on Sunday.

Q. Did he object to hearing a statement of the case on Sunday? A. He did not, as I got through with it before he could very well have a chance to object.

Q. Do you recollect upon what ground you applied in that case, besides what you have already stated, which was to secure certain deposits, checks, and so forth, of the plaintiff? A. On the ground that the affairs of the Bank were in great confusion, owing to its inability to pass the clearances of the different brokers.

Q. You applied to Judge Clerke. What did he give you? A. He gave me the order that I asked for.

Q. Won't you let me see that order? A. (Handing paper to counsel.) That is in one of the suits. Judge Clerke signed two injunction orders and an attachment at the same time in the different suits.

Q. On what day? A. The 26th of September. There were two suits by Ashworth, one against the Gold Exchange Bank and the Bank of Commerce, and another against the Gold Exchange Bank and Dornin & Bocock, an injunction in each suit.

By Mr. FULLERTON:

Q. Then, in answering my question, you omitted to state that? A. I have already stated I omitted that.

Q. Will you let me look at the injunction in that omitted case? A. I have not got it.

By Mr. VAN COTT:

Q. Judge Clerke did not appoint a Receiver on the 27th of September? A. No, sir. An order to show cause.

Q. He gave you an injunction and an order to show cause why a Receiver should not be appointed? A. Yes, sir.

Q. That was for the first Monday of October, and on that day you say he appointed Brown Receiver, on the return of the order to show cause? A. No, sir, I don't say that; that motion never was brought to a hearing, as we settled the suit and got our money.

Q. You settled the suit before the first Monday of October? A. No, sir, but we adjourned it from time to time under promise that it would be settled.

Q. Well, you didn't pursue a Receivership? A. No, sir.

Q. Who appeared for the Gold Exchange Bank to adjourn the motion? A. Somebody from Martin & Smith's office.

Q. When did you make the settlement? A. We finally settled it and exchanged releases on the 22d of October.

Q. You settled it by exchanging releases, did you? A. I have a copy of the settlement that was made of all our suits with the Bank.

Q. Was that the settlement—a settlement by a simple exchange of releases? A. Oh, they paid us our demands.

Q. Did Mr. Jordan pay it? A. Yes. Well, I say the 22d. That may not have been the date of the execution of the releases.

Q. Well, you are aware that on the 20th of October Mr. Jordan obtained an order in the three suits, are you not, authorizing him to proceed and make payments of various claims? A. Yes, sir,

Q. And he paid it under that order? A. Yes, sir.

Q. But you never got a Receiver? A. Not in the Ashworth suit; no, sir.

Q. In which suit did you get a Receiver? A. The suit of Robert Baile.

Q. I wish you would let me see that order? A. It is already in evidence, I think.

By Mr. TILDEN:

Q. In whose handwriting is this paper? [Exhibit S 1, March 6th, 1872, in the Ashworth suit.] A. My own.

Q. Did you have it drawn when you went to see Judge Cardozo? A. Yes, sir.

Q. This same paper? A. Yes, sir.

Q. This is precisely what you asked from him? A. Precisely.

Q. To what extent was Mr. Ashworth a creditor? A. One hundred and thirty and odd thousand dollars.

Q. As against whom? A. The theory of the Ashworth suit was this: We had loaned Dornin & Bocock $140,000, in currency, and they to give us $140,000 in gold as security. We paid them the currency through the Gold Exchange Bank, and they were to pay us gold through the Gold Exchange Bank. They paid the gold to the Exchange Bank in checks, drafts and obligations of third parties—gold obligations. We claimed that the Bank received them as our trustee; and the makers of those gold obligations having failed and the Bank having refused to return us our currency, we claimed that we should have the obligations of these third parties, or that the Bank should not dispose of them to their other creditors; but that these obligations were ours, received by them in trust for us.

Q. Had they received the gold securities from these other parties? A. Yes, sir.

Q. Your claim was only against Dornin & Bocock? A. That is all.

By Mr. NILES:

Q. Well, it was that they should not part with these securities that you claimed were yours? A. Exactly.

Q. Is not that the way in regard to every suit you brought, except the suit of Gillespie, which you commenced in pursuance of a conversation you had with Gillespie & Shearman at the Erie Railroad office? I mean down to the 9th of October. A. The suits were all different in character.

Q. What I mean is, was there anything except special relief against the Gold Exchange Bank in any of those suits down to the 9th of October, except the one of Gillespie? A. O, yes; we brought a suit in the Superior Court, Robert Baile, plaintiff, against the Bank, and against Jordan individually as Receiver.

Q. I say, prior to the 9th of October? A. No, I think that was all.

By Mr. TILDEN:

Q. You claimed that you had the right to certain securities that were in the hands of the Gold Exchange Bank, that had been put there by Dornin & Bocock? A. Yes, sir.

Q. And the extent of the relief you asked for was, that the Gold Exchange Bank should not part with those securities, and the Receivership you asked for was of those securities? A. Yes, sir.

Q. It was special? A. Yes, sir.

By Mr. VAN COTT:

Q. Will you let me see the complaint on which Judge Cardozo endorsed an opinion? A. (Paper handed to counsel.) It was a complaint upon which we asked specific relief in an injunction, and Judge Cardozo refused to give us it, stating that he would give us a short order to show cause on a petition.

Q. Was this suit of the same general character as that of Ashworth, claiming to reach specific property, and asking an injunction and Receivership as to that property? A. No, sir; it was a different suit.

Q. What was the general scope of this suit? A. In that suit, the suit of Adolphus M. Corn, we claimed to be the creditor of the Bank on a settlement of our mutual accounts; and the Bank averred that some of the securities which we had given the Bank were worthless, and they therefore made a reclamation upon us, notwithstanding our settlement with them, for the payment of the full amount of our original indebtedness.

Q. I will ask you whether the prayer was not to recover the sum of $5,145.15 currency and $1,874.50 gold coin, in which sum you claimed that the Bank was indebted to you, and in the prayer you asked that the Bank, and that Jordan as its Receiver, should be adjudged to pay that sum to you? A. I asked that they might be enjoined from paying any other creditors until they had settled with us; that we should have the preference.

Q. This was on the 13th of October? A. Yes, sir.

Q. Five days, I think, after you had signed the consent to that order preferring Heath & Company and Willard & Company, was it not? A. I have no recollection.

Q. On the night you say you saw the Bank in possession of a mob, was Mr. Shearman there? A. I was not there.

Q. You said you represented to the Judge that the Bank was in possession of a mob? Q. Yes, sir.

Q. You did not know it to be a fact when you made that statement to him? A. I made it on the strength of the representation of Mr. Ashworth.

Q. Was it a fact, sworn to in the papers on which you applied? A. It was not.

Q So you ventured to make a statement, outside of the papers, to the effect that the Bank was in possession of a mob and that the necessity for relief was very exigent? A. It was not a ground for asking for relief, but it was a ground for asking for an injunction at that hour of the night.

Q. Do you think that was the ground upon which you got it? A. I think that is one of the reasons that induced Judge Cardozo to sign the injunction that night.

By Mr. FLAMMER:

Q. Upon being asked in reference to the printed portion of the complaint in the Gillespie suit, you stated you had asked Mr. Shearman to show you one of their complaints from which to draft a complaint in the Gillespie case, and that you asked him to show you the complaint as a favor, stating at the same time you were not familiar with that class of actions? A. Yes, sir.

Q. Now, can you tell us why you were selected by Mr. Shearman and presented to Mr. Gillespie, and asked to act for him, when you were not familiar with that class of actions? A. I suppose Mr. Shearman did not know I was not familiar with that class of actions when he suggested my name, and supposed I had brains enough to become familiar with it after I was retained.

Q. Did Mr. Shearman tell you he would introduce you to Mr. Gillespie, and subsequently instruct you as to the course to take? A. He said nothing of the kind; on the contrary, I had no conversation whatever with him on the subject; he simply introduced Mr. Gillespie to me as a gentleman for whom he could not himself act, Gillespie having a claim against their clients. Mr. Gillespie then told me his story and retained me.

By Mr. TILDEN:

Q. What was the nature of the claim of Mr. Robert Baile? A. I think it was to recover differences of their clearances.

By Mr. FLAMMER:

Q. Is this you rwriting? (Exhibit Q.) A. This is the handwriting of a clerk in our office.

Q Is any part of that complaint in your writing? A. Excepting paragraph 12, it is in my handwriting; the signature and the verification are in my handwriting.

Q. Was this writing of yours made at the same time? A. Yes, sir.

Q. Had you at that time this printed portion of the complaint? A. I had.

Q. Had you the printed portion of the complaint before the remainder of the complaint was written? A. I could not say as to that.

Q. Had you the printed complaint from Mr. Shearman before you commenced to prepare the complaint in this action? A. No, sir; I had not. Which action is that?

Q. Gillespie, Common Pleas. A. I hold in my hand my original draft of the complaint in that action.

Q. Did you make that draft before you had this printed portion of the complaint? A. I think I did.

Q. Does that contain any portion of this? A. It comes down to the printed part and then stops; that is a part of the prayer for relief.

Q. Did you know at that time that there was in existence a prayer, similar to that which you procured, when you received this portion of this complaint? A. I know that Field & Shearman were bringing actions of some sort against the Stock Exchange and the Gold Exchange, and I asked Mr. Shearman, as a personal favor to me, to let me look at one of his complaints.

Q. You made no effort, then, to prepare this portion of the prayer, did you, in the complaint? A. I think not, sir.

By Mr. NILES:

Q. How long had you been associated with Mr. Shearman, and how? A. Mr. Shearman was my partner about two years, from 1863, perhaps, to 1865.

Q. Then did he go with Mr. Field? A. He went with Field & Shearman.

Q. You went, about that same time, to Barrett's? A. Oh, no; some time after that I went with Barrett.

Q. Did you not copy this complaint from the printed complaint which Mr. Shearman prepared, just changing it to conform to your particular case, and leaving the blanks to be filled in when you got the facts from your client? A. I have no precise recollection upon the subject, but I think not.

Q. Do you think you had not a copy of that printed complaint before you when you wrote this draft? A. I don't think I had.

Q. Where did you prepare that draft? A. At my house.

Q. Was it Gillespie who went with you to see Sauzade? A. No, sir; it was Robert Baile.

Q. Did Gillespie go with you to see Robert Baile? A. No, sir; Gillespie's suit has nothing to do with the Gold Exchange Bank.

Q. I understand that. Did you send for Robert Baile to come to your office, after you had this interview with Gillespie? A. I have no recollection of having done, or of having any occasion to do so.

By Mr. VAN COTT:

Q. The order of the 9th of October, in the Osborne case and two other cases, directed the payment of $5,000 to the plaintiffs' attorneys; for which of the plaintiffs were your firm attorneys? A. I have already stated I do not know the actions in which an order was entered, and I cannot say without seeing.

Q. In what suit were you substituted as attorneys? A. I recollect one, which was Lloyd and Hamilton.

Q. Then you were for the plaintiffs in that action. Was that $5,000 paid over to your firm by Brown? A. I think not, sir.

Q. Do you know to whom he did pay it? A. I don't think there was any such sum of money paid to us or for our account in that matter.

Q. Do you know to whom Brown did pay that $5,000? A. I know nothing about it.

Q. You said Mr. Field would not consent to the entry of that order, and that that was the reason assigned for substituting you. What was Mr. Field's objection? A. I only know what his objection was from what he has told me since.

Q. Didn't he tell you at the time? A. I didn't see him at the time.

Q. What did he tell you was his objection? A. His objection was he would not consent to the payment of such a sum of money out of the Bank. That Judge James Emott had insisted upon it, and he had therefore signed this consent of substitution.

Q. What sums do you mean? A. I don't know what sums he referred to.

Q. You don't know what sums he named? Was it his objection that Judge Emott insisted that the money was to be paid? Was that the point of the objection? A. Mr. Field told me that he would not sign the order for the Receiver to pay those sums of money.

Q. Were you attorney at one time for the Erie Railway Company? A. Never in my life.

Q. Never in their employ? A. I did not say that.

Q. In what character were you employed by them? A. I have done some attorney business for the Erie Railway Company in the way of drawing leases and agreements. I have never been engaged in any suit on their behalf either as attorney or counsel.

Q. You have performed professional services for the Erie Railway Company? A. To a very limited extent.

Q. When was that? A. All along for the last two years.

Q. At any time before this litigation about which you have been testifying to-day, had you rendered any professional services to them? A. I think not, sir; perhaps I may have done so.

Q. But you have since? A. Oh, something of that sort. I have frequently been employed in suits against them, though.

Q. At whose request did you represent the Gould-Fisk interest in suits against the Susquehanna Railroad? A. I never was interested in any of their suits representing them in any way.

Q. You say you never represented the interests of Jay Gould or James Fisk, Jr., directly, or indirectly, in any litigation whatever? A. I do.

Q. Did you represent the interest of the Ramsey Board or the

opposing Board in the Susquehanna litigations? A. We were attorneys for the Albany and Susquehanna Railroad, the Vice President of the road and the majority of the Board of Directors.

Q. Did you espouse the same side as Gould and Fisk in that litigation? A. No, sir.

Q. Did you represent the opposing interest? A. We believed that they were entirely right in that litigation.

Q. Did you represent the interest opposing their interest or harmonizing with their interest? A. Harmonizing with their interest.

Q. Will you undertake to swear you did not represent what was their interest in that litigation? A. I undertake to say we do not appear on the record in any way. We represented parties who were interested with them.

Q. And that was before those suits to which you have been testifying to-day? A. I can't remember, sir.

Q. What was the date of your retainer in the Susquehanna and Erie litigation? It was in the Summer of 1869, was it not? A. Yes. (Looking at book.) "Retained by J. R. Herrick, Vice-President of defendant."

Q. What was the date? A. August 10, 1869.

Q. Then in September and October you had these other litigations? A. Yes, sir.

By Mr. OWEN:

Q. You spoke of Judge Emott; for whom did he act in the transaction and settlement? For the Bank.

Q. With Martin & Smith? A. Yes, sir; and was very urgent that the consent should be signed.

By Mr. VAN COTT:

Q. Don't you know it is the fact that Gould and Fisk would not consent to let the Gold Exchange Bank up from the Receivership of Brown, unless that order was consented to—unless those payments were consented to as provided for in that order? A. I know only this, that Mr. Fisk telegraphed to Mr. Field that he must do in the matter precisely as he thought best.

Q. Did you see the telegram? A. I did not.

Q. What Field do you refer to? A. I refer to David Dudley Field.

Q. Who told you that Fisk had telegraphed to that effect to David Dudley Field? A. David Dudley Fied.

Q. Himself? A. Yes, sir.

By Mr. TILDEN:

Q. What was your relation to the litigation between Fisk and the Union Pacific Railroad Company? A. I was appointed Referee to take depositions to be used on a motion in that case.

Q. One motion only? A. I think only one motion.

Q. Were you a Referee in the cases of contempt against the Directors of the Railroad Company? A. Yes; to take proof.

Q. Were you Referee in anything else? A. No, sir.

WILLIAM F. HOWE, having been duly sworn, testified as follows:

By Mr. FULLERTON:

Q. You are a member of the Bar in this city? A. Yes, sir.

Q. How long have you been engaged in the practice of the law? A Since 1857 or 1859.

Q. A member of the firm of Howe & Hummel? A. Yes, sir.

Q. What is the nature of your practice? A. Principally criminal.

Q. The largest criminal business in this city, I believe, is it not? A. I will not say that; but I believe I have more criminal business than very many.

Q. Your firm appears as the attorneys in numerous writs of *habeas corpus* issued to bring up prisoners some time after final conviction. I want to call your attention to these cases. What is the practice upon the issuing of such a writ? A. Of *habeas corpus*?

Q. Yes, with reference to communication with the District Attorney's office? A. The writ is issued mostly from the Supreme Court; the District Attorney is notified of the issue of the writ and he appears there in person, or by his representative "assistants," as they are called, on the hearing of the writ.

Q. Speaking exclusively of the writs returnable before Judge Cardozo, I ask what was his practice with reference to requiring the presence of the District Attorney or some one representing him? A. It was the Judge's invariable practice to require the District Attorney to be present before the case would be heard. I mean by the District Attorney, the District Attorney himself, or one of his assistants to whom I have referred; there are three assistants.

Q. Did he not always refuse to hear any case in which the District Attorney's office was not represented? A. In each instance in which I appeared.

Q. What was the practice of the District Attorney's office, if they did not appear in person? A. The jailor would take the writ of *habeas corpus* with the prisoner, pursuant to an old direction of Mr. Hall, when he was District Attorney, and which the present District Attorney has carried out, that the prisoner should be conveyed, in the first instance to, the District Attorney's office, where the return to the writ would be stamped by some of the subordinates in that office; then the prisoner would be taken before the Judge by whom the writ was issued, or before whom it would be returned, accompanied by a representa-

tive of the District Attorney. If the District Attorney thought it was a case in which he should not appear he would endorse the writ by way of consent.

Q. As for instance? A. "I hereby consent that the within named prisoner be admitted to bail," "or, I hereby consent that the within named prisoner be discharged on his own recognizance," or, "I hereby consent the herein-named prisoner be discharged."

Q. And on the presentation of the writ with such endorsement, what would take place? A. The discharge would be a matter of course, by any Judge who was present.

Q. And that was the practice, to discharge on consent from the District Attorney's office? A. Since my recollection, before Judge Sutherland, Judge Clerke, Judge Barbour, Judge Brady, Judge Cardozo, and indeed any Judge to whom I have presented such a writ, with such an endorsement.

Q. Have you known all of the Judges named, as well as Judge Sutherland, to order discharges upon writs of Habeas Corpus under such circumstances? A. I will not say yes, because I don't know that I have been before each Judge I have named with the District Attorney's endorsement, or a consent; but it certainly was the case in those instances in which he did so make the endorsement.

Q. Suppose the Judge orders a prisoner discharged on giving bail; does the Judge thus ordering, necessarily take bail? A. No, sir.

Q. How has the pracsice been in regard to that, within your experience? A. They would depend upon the convenience of the order or wish of the District Attorney; the bail might be ordered by one Judge and taken before another.

Q. Have you known such instances? A. Oh, yes; plenty on record.

Q. Have you not known such instances where the discharge was signed by a third Judge? A. One recently, very recently.

Q. What case do you refer to? A. The case of Knapp, in which Mr. Townsend obtained a writ, a case of keeping a disorderly house, the defendant was charged with keeping a disorderly house, and if I do not err, Judge Cardozo allowed the writ or certiorari, Judge Barrett fixed the bail, and Judge Barnard discharged the prisoner. I may not be correct in the chronology of the case.

Q. Have you known instances where prisoners have been discharged on bail in case of writs of certiorari, where the endorsement upon the back of the writ itself did not indicate the fact that he was thus discharged? A. Yes, sir.

Q. Tell the Committee, if you please, what you have known to occur in cases of that kind? A. With reference to the Special Session.

Q. Yes. A. If a prisoner would be brought before the

Supreme Court on a writ of Habeas Corpus after conviction by the Court of Special Sessions, the District Attorney would ask, possibly, for an adjournment, and ascertain whether the representatives of the relator were correct as to the manner of the Court below; there would be adjournments from time to time to suit the convenience of the District Attorney, or for some other reasons, and ultimately it would transpire that the Court was, I will not say properly constituted, for I do not believe that it was, but in the view of the District it was, appears to be properly constituted, and then we would withdraw the writ, and the prisoner would be remitted.

Q. If a different conclusion is arrived at in regard to a constitutional Court, what would be the course? A. Some years since, myself and Mr. Stuyverant, who is now dead, thought the original Court of Special Sessions was improperly constituted. It was proved that three Judges should sit, and they used to transact their business before two. We carried that case before Judge Sutherland—the case of Devine—Mr. Sedgwick was then Assistant District Attorney, and we argued, and the Judge sustained us, that the Court was improperly constituted, and that prisoner was discharged on a writ of Habeas Corpus.

Mr. FULLERTON.—That is the case to which I have called the attention of the Committee.

Q. Name the Judges from whom you have obtained writs of habeas corpus in connection with convictions in the Court of Special Sessions? A. Judge Joseph F. Barnard, Judge Thomas W. Clerke, Judge Brady, present Judge in the Supreme Court, Judge Sutherland, Judge Rufus W. Peckham, Judge Cardozo, Judge Barbour, Judge Ingraham.

Q. Judge George Barnard? A. Judge George Barnard.

Q. Judge Sutherland? A. Judge Sutherland.

Q. From whom did you most frequently obtain writs of habeas corpus in such cases? A. From Judge Cardozo.

Q. State to the Committee why? A. Well, Judge Cardozo was mostly in that building, and could be found at an early hour of the morning, which suited me, before my ordinary practice commenced; he was generally to be found between 9½ and 10 o'clock; Special Term was not opened until 10, usually, and sometimes not until much later.

Q. Your applications to him, then, grew out of the fact that he was accessible at a convenient hour in the morning? A. Yes, sir. Very many writs which I obtained from Judge Cardozo were heard and determined before other Judges.

Q. How many of such writs obtained before Judge Cardozo, in your judgment, were heard before other Judges? A. I cannot tell, but very many.

Q. Give us some idea of the number. A. Well, forty or fifty, I presume; the writs are on file.

Q. Will you give us some estimate of the number of writs of Habeas Corpus which you sued out and heard before other Judges than Judge Cardozo? A. We have had so many, I cannot tell; several hundred.

Q. Several hundred in all, or several hundred heard before other Judges? A. Before other Judges. I would state, my business being principally criminal, in fact wholly so, I have obtained the sobriquet of "Habeas Corpus Howe."

Q. I suppose you have always obtained these writs of Habeas Corpus upon petition, have you not? A. Yes, sir.

Q. What becomes of the petition? A. The petition is filed by the Clerk of the Court before which it is obtained.

Q. Will you state the petition of the complaint in which application was made for a writ of Habeas Corpus to bring up prisoners after final conviction? A. In every instance in which I obtained a writ of Habeas Corpus after conviction, I recited in the petition that I believed it was the law, is the law now, and that the Court of Appeals will decide to be the law, that the Court of Special Sessions was illegally constituted, that the statutes passed provided, certainly lately, for the sitting of that Court with two Justices, but in many instances only one presided; therefore, it was not a Court of Special Sessions.

Q Then the respect in which the Court was illegally constituted was set forth in the application for a Habeas Corpus? A. In every instance.

Q. Do you know where those petitions are? A. I do not; they are filed, in each instance.

Q. There are numerous instances here, before this Committee, in which prisoners have been discharged afier final conviction, where it appears by the return of the Warden of the prison that the Court was constituted by two Judges. Will you state what transpired in such cases? A. Upon the return of the *habeas corpus*, it would be an element for the keeper of the Penitentiary to hold the prisoner; it would appear on the face of the papers, in some instances, that the Court consisted of two Judges, when the fact would be that only one Judge was sitting at the time of the conviction. Acting upon the authority of Judge Sutherland in that case of The People *vs.* Devine, to which you have referred, we would submit to the District Attorney the fact that only one Judge was sitting, and that we could produce evidence of that fact. Upon that concession being made, if the fact warwanted it, the District Attorney would consent to discharge, if I may state, because he desired that it should not go forth publicly that one Judge had been sitting and that there had been an illegal conviction, which might operate as a general jail delivery.

Q. Now, Mr. Howe, would that all appear as part of the record in those cases? A. No, sir; not as parts of the record.

Q. Would the traverse of the return be oral or in writing? A. The traverse would be oral; I do not remember, except in one

case, that the traverse of a writ of Habeas Corpus has been in writing; the District Attorney has conceded to let us plead orally, in all instances, that I can remember; it has even extended to the General Sessions.

Q. If I understand your testimony, when you sued out a writ of Habeas Corpus to bring up a prisoner, after final conviction, upon the ground that only one Judge held the Court, and it was therefore illegal, and the return showed on its face that the Court had been held two Judges, that would be denied by you orally, and conceded by the District Attorney, and the prisoner would be discharged, and there would be nothing to show why? A. Not at all; these facts would be only known to the District Attorney and myself, not even known to the Judge.

Q. State how the District Attorney would inform himself as to the truth of the traverse to the return? A. Mr. Jerome, who had charge of that branch, would make inquiries; of course we would not represent that there was but one Judge presiding, if we had not the evidence; the minutes of the Court would show it.

Q. The adjournments then had, from time to time, were to enable the District Attorney to make those inquiries? A. Yes, sir; and I would state that there were many instances in which the return would show that only one Judge presided.

Mr. TILDEN:

Q. How long has this practice been going on of only one Judge presiding? A. Since the organization of the Court. I have no doubt you will find to-day that is so, Judge Dowling sitting and Judge Shandley away, although the statute provides that there shall be two; when Judge Kelly was in, Judge Dowling would sit a month through with a few exceptions; I remember one case particularly in which my client suffered a great hardship, as I supposed; Judge Dowling was away in Europe and we could not serve him with a writ of Habeas Corpus, and Judge Cardozo remanded the prisoner. I claimed then, and I do now, that was not a disability.

Q. How many years has this practice been going on of one Judge sitting, when the statute requires two? A. I think from the time that Judge Kelly was there, four or five years back.

Q. And usually there is but one Judge sitting? A. Yes, sir; nine times out of ten it is safe to say that there has been one Judge sitting in the Court of Special Sessions; I believe every criminal lawyer in New York has remarked it and taken advantage of it. I have no doubt it was the same this morning in the Court of Special Sessions, although I was not there.

Mr. FULLERTON:

Q. In cases of temporary commitments and commitment on

insufficient evidence, what has been the practice of Judge Cardozo, when you have been connected with the case? A. Judge Cardozo's practice was hostile to the prisoner and the counsel in such cases, and he would remand; I only know of one instance where Judge Cardozo discharged; it was when on the bench of Common Pleas.

Q. That was prior to 1868? A. Yes, sir.

Q. The Beaumont case has been spoken of; I want to call your attention to that. You recollect Mrs. Beaumont was remanded on several occasions? A. She was remanded; yes, sir. I do not know how many times, but the writ will show. The writ of Habeas Corpus has upon it the endorsement of the remand, and the writ, being produced, will show for itself how many times that remand took place.

Q. Why was she remanded so frequently? A. It was from the District Attorney's office, in order to ascertain the facts of the case, and to know whether there should be a discharge or bail.

Q. Is it not as a matter of course that a prisoner is remanded when the District Attorney asks for it? A. Yes, sir. I know of no instance where the District Attorney was refused a remand on a writ of Habeas Corpus.

Q. Does it sometimes occur that a writ issued to bring up a particular person is discharged, and another issued immediately? A. Yes, sir.

Q. What gives rise to such a thing as that? A. It might be through the absence of counsel when the writ was returnable; it might be from counsel finding out that the case was adverse to him from the facts. For instance, upon a return to a writ, we, claiming that there is only one Justice, it might appear in the course of the investigation that two Justices had been in that case. I would then waive that, and treat it as law, and consequently the prisoner would be remanded.

Q. Mrs. Beaumont was discharged? A. She was discharged—not absolutely. Mr. Beaumont was also discharged for appearance at the General Term, and that case is set down for argument, I think, at the next General Term.

Q. Was there a recognizance given in that case? A. My impression is that there was.

Q. And the case was set down for argument? A. Yes, and a writ of *certioriari* served upon the Court of Special Sessions. There were two defendants in the case, husband and wife.

Q. It has been said that you got $1,000 fee from Mrs. Beaumont, to procure her discharge; did Judge Cardozo know anything about that? A. No, sir. I think I got more, if my memory is correct.

Q. I am going to ask you this question: From first to last, did Judge Cardozo ever have any interest, directly or indirectly, remotely or otherwise, in any business of yours as a lawyer, or

in connection with your partner, Hummel? A. Never but once, sir.

Q. State what that was? A. It was a very painful case; but if you press me to allude to it I will. It was the occasion of the investigation of the Nathan murder, in which I and Superintendent Jordan took a particular interest to endeavor to ferret out the perpetrator of that crime. That is the only one.

Q. I meant a pecuniary interest? A. Never, sir; never.

Q. Of any kind or character? A. Never.

Q. And when you spoke of an interest in one case, you meant a personal interest? A. Yes, sir; I thought your question applied in that way.

Q. I go still further. Did you ever make to Judge Cardozo a present to the extent of a farthing? A. No, sir; I never was on terms of intimacy with Judge Cardozo sufficient to warrant such a proceeding; my intercourse with Judge Cardozo in any case, was only that to which I have referred.

Q. Was your practice before him the same as that before any Judge, except that it was more frequent, because he was more accessible? A. Entirely so, sir; no distinction.

Q. In what year was the Beaumont matter? A. I think it was in 1871; it was in November, I think, if I am correct.

Q. There is a writ of a *certiorari* in the case of William Beaumont as well? A. I think the two were comprehended in one writ; that is a matter of record.

The Court here took a recesss until 7½ P. M.

EVENING SESSION.

ROBERT YELVERTON recalled; examined by Mr. PARSONS:

Q. What was the balance of Judge Cardozo's account to his credit immediately preceding the deposit of $1,400 in bills on January 8th, 1870? A. Balance to his credit $2,827.96.

Q. And to what did that deposit increase the balance? A. To $4,227.96.

Q. Did Judge Cardozo, about or shortly subsequent to that time, make a deposit from his account in the Mechanics' Bank to the United States Trust Company? A. He made a deposit on the 13th of January of $2,000 in the United States Trust Company, which went to his debit in the Mechanics' Bank, and on the 14th of $1,000.

Q. At what date did the $2,000 go to the debit of his account in the Mechanics' Bank? A. On the 14th of January.

Q. What was the amount to Judge Cardozo's credit in the Mechanics' Bank when he made the deposit in bills on March 30th, 1870, of $600? A. The amount to his credit in the Mechanics' Bank on March 30th was $879.43.

Q. To what amount was that increased by the deposit of that day? A. Increased to $1,479.43.

Q. Did Judge Cardozo make a deposit, about or shortly after that time, in the United States Trust Company, of money which was drawn from the account in the Mechanics' Bank? A. Not immediately after that.

Q. How shortly after? A. On the 17th of September.

Q. Look at the 14th of April, 1870. Can you tell by looking at the account of deposits in the Trust Company? A. Yes, sir; there is a deposit, on the 13th of April, of $2,500 in the United States Trust Company which went to his debit in the Mechanics' Bank on the 14th.

Q. You have spoken of a deposit in the Trust Company of $1,000, on June 14, 1870. Was that money drawn from the account of Judge Cardozo in the Mechanics' Bank? A. No, sir; it was not.

Q. What was the amount to Judge Cardozo's credit in the Mechanics' Bank in August, 1870, when was made the deposit in that account to his credit in bills of $800? A. The amount to his credit was $976.28.

Q. To what amount was that increased by the deposit? A. $9,676.28.

Q. When first, after August 19, 1870, did Judge Cardozo make a deposit in the United States Trust Company of money which came from his account in the Mechanics' Bank? A. On the 17th of September he deposited in the United States Trust Company $6,000, which went to his debit in the Mechanics' Bank.

Q. On what date? A. It went to his debit on the 19th.

Q. And had that amount of $6,000 been in the Bank continuously from the time of the deposit of $800 on the 19th of August? A. I cannot say positively as to that.

Q. Can you tell by looking at the account? A. Yes, sir; it did.

Q. What amount had Judge Cardozo to his credit in the Mechanics' Bank, December 8, 1870, when he made a deposit in bills to that account of $1,850? A. He had to his credit $920.72.

Q. To what amount was that increased by the deposit of that day? A. $2,770.72.

Q. When next, after that date of December 8, 1870, was Judge Cardozo's account in the Mechanics' Bank balanced, and what was the balance to his credit at the date of the balance? A. Balanced on the 14th of December, 1870.

Q. And what was the balance, and on which side? A. $2,405.97 to his credit.

Q. What was the amount of the balance of Judge Cardozo's account in the Mechanics' Bank on January 25, 1871, when was

made the deposit to his credit of $2,015 in bills? A. The amount to his credit was $3,565.17.

Q. And to what amount was that increased by the deposit of that date? A. To $5,580.17.

Q. Did Judge Cardozo, about, or shortly after that deposit, make a deposit in the United States Trust Company of money which came from his account in the Mechanics' Bank? A. He deposited in the Trust Company, on the 26th of January, $2,000, which went to his debit in the Mechanics' Bank.

Q. On what date? A. On 27th.

Q. What was the amount to the credit of Judge Cardozo, in the Mechanics' Bank, on March 18, 1871, when he made the deposit of $2,450 in bills to his credit? A. The amount was $805.02.

Q. Increased to what amount by the deposit of that date? A. To $3,255.02.

Q. Did Judge Cardozo, about or shortly after that time, and if so, when, make a deposit in the United States Trust Company of money drawn from his account in the Mechanics' Bank? A. On the 18th of March he deposited $2,250.

Q. That was $200 less than the amount deposited to his credit in bills, on the same day, in the Mechanics' Bank? A. Yes, sir.

Q. And at what date did that go to his debit in the Mechanics' Bank? A. On the 20th of March, 1871.

Q. Do you know whether the 19th of March was a Sunday? A. I do not, sir.

Q. Did you find, anywhere in Judge Cardozo's account in the Mechanics' Bank, amounts debited to him as drawn from his account in that Bank, which corresponded with the amounts deposited to his credit in that account, in bills, to which your attention has been called? A. I have not, sir.

Q. Did you look to see whether the account shows a charge to him of any such amount, in any case? A. I have looked, and I have not discovered any.

Q. Have you examined, with that view, the account from January 1, 1868, to the close of the account? A. I think I have, sir, pretty thoroughly.

Q. Do you not find credited to Judge Cardozo, in his account in the Mechanics' Bank, in every case, the amount in bills to which your attention has been called? A. I do, sir.

Q. And in no case do you find a charge to him of a corresponding amount, which would discharge any such amount, assuming that to have been a loan? A. No, sir.

Q. In no case? A. No, sir.

By Mr. NILES:

Q Did you find any case, within a short time after these credits of sums drawn from his Bank, which would repay those

sums, with a few days' or a few weeks' interest? A. I did not, sir; I cannot find any such case.

Mr. OWEN:

Q. Did you look for them? A. I cannot say I examined that so carefully as the other part of the account, or the exact items.

Mr. PARSONS:

Q Were not the checks almost invariably for very small amounts? A. Yes, sir, except when they would be deposited in the Trust Company; in one case there is a check of $5,000; on the same day an even amount.

Q. But with that exception, and the exception of the checks which went to the Trust Company, the checks are for very small amounts—very much less than these deposits? A. There may have been one or two exceptions, but generally it is so.

By Mr. FULLERTON:

Q. State, if you please, the sums which Judge Cardozo drew out of the Trust Company, and the dates when the respective drafts were made? A.:

December 14, 1868,	$1,015 22
February 3, 1870,	500 00
May 23, 1870,	2,806 96
July 22. 1870,	5,032 22
October 24, 1870,	10,640 16
November 25, 1870,	5,413 58
June 6, 1871,	4,679 51
August 24, 1871,	1,000 00
October 2, 1871,	1,011 66
November 13, 1871,	3,564 00
December 1, 1871,	547 44
December 28, 1871,	500 00

Q. Did any of those sums which you have now named go to his credit in the Mechanics' Bank? A. Yes, sir.

Q. Name the sums of those that you have just stated that went to his credit in the Mechanics' Bank? A. All those amounts which I have called off were deposited in the Mechanics' Bank, each and every one of them, except the last item of $500, December 28, about which I am not positive.

Q What was it that you said about a certain $5,000? A. I said there was a debit in the account on one day of $5,000, and a credit on the same day of the same amount.

Q. I understood you to say that that was the only large amount drawn out where it did not go into the Trust Company? A. No, sir; I said there were some others, but I mentioned that as one.

Q. Do you remember another of $15,000? A. I think there was one of $15,000.

Q. Do you recollect another of $4,000? A. I believe there was one of $4,000.

Q. Do you recollect another of $1,500? A. Yes, sir.

Q. Do you recollect another of $500? A. Yes, sir.

Q. And another of $800? A. Yes, sir.

Q. And another of $500? A. Yes, sir.

Q. Do you recollect another of $2,000? A. That is one of the items deposited in the Trust Company.

Q. Do you recollect one of $5,000? A. That is the one I refer to.

Q. Do you see another one still, of $5,000? A. Yes, sir.

Q. Do you see another one of $10,000? A. Yes, sir.

Q. Do you see another one of $1,500? A. Yes, sir.

Q. Do you see another one of $3,500? A. Yes, sir.

Q. Do you see another of $3,000? A. Yes, sir.

Q. Do you see another of $1,105.59? A. Yes, sir.

Q. Do you see another of $4,775? A. Yes, sir.

Q. Do you see another of $5,850? A. Yes, sir.

Q. Do you see another of $5,000? A. I see one; I do not know whether it is the one that I mentioned.

Q. Do you see another of $1,281.93? A. Yes, sir.

Q. How much money did Judge Cardozo draw out of the Trust Company in October, 1870, none of which was deposited in the Mechanic's Bank? A. I do not recollect that he drew out any.

Q. How much did he draw out of the Mechanics' Bank that did not go into the Trust Company? A. I cannot say that.

Q. Can you foot it up there? A. $19,574.

Q. Will you take this paper and make a calculation of the sum that he drew from the Mechanics' Bank, irrespective of what was deposited in the Trust Company. (Witness retires to make calculation.)

GEORGE C. BARRETT, called and sworn; examined by Mr. FULLERTON:

Q. Prior to January 1st, 1872, when you went upon the bench of the Supreme Court, were you a member of the firm of Barretts & Redfield? A. Yes, sir.

Q. Had you any connection, when in the practice of the law, with various suits that came into your office, growing out of the gold transactions of Black Friday? A. Yes, sir.

Q. I want to call your attention particularly to an order entered on the 9th of October, 1869, in the case of Charles J. Osborne *vs.* the New York Gold Exchange Bank; William Lloyd and others *vs.* the same; Benjamin F. Carver and another *vs.* the same—placing this order in your hand, marked Exhibit

G, February 20th, 1872, I want to know what connection you had with that paper. I also place in your hand another order of the same date, in the same cases, and would let one question cover both—the last order being Exhibit F? A. This is the first time that I ever saw or knew of the contents of this order which is called Exhibit F.

Q. Then direct your answer particularly to the other Exhibit? A. The general fact that Mr. Brown was to be removed and Mr. Conrad L. Jordan appointed Receiver in his place, I knew, and my connection with it was just this: I resigned from the Common Pleas on the 30th of September, 1869, and joined the firm of Barretts & Redfield on the 1st of October, 1869; Mr. Brown was appointed Receiver, if I recollect right, on the 4th October, 1869; a client of mine, named Robert Baile, was brought to me to take some steps against the Gold Exchange Bank to get his money out of that Bank; I ascertained the fact of Mr. Brown's appointment and the granting of the injunction against the Bank, and I advised Mr. Baile to commence a similar suit against the Bank and have the appointment of Mr Brown, which had been made in the first instance, reaffirmed in his suit, so that the first suit could not be discontinued and the Receivership got rid of without Mr. Baile's consent; that he would be in a position to hold the party in check and thus possibly to get his money. That was my advice to him. I drew the draft papers and obtained the order in the Baile case, of the appointment of Mr. Brown over again as Receiver. I applied to Judge Cardozo, in person, for that order: I think I am mistaken about the date. I meant to say it was the 4th of October, when I got the order—not the 4th of October when Mr. Brown had been appointed. He had been appointed previously. I looked at my register this morning, and saw that the date was the 3d of October, three days after I went into the firm—when I applied to the Judge in open Court, for that order. He asked me what use was there in such an order, or what the point was in such a proceeding, and I explained that it was on the same principle as a creditor's bill, for reappointing a Receiver for a judgment creditor, in a case where a previous judgment creditor on similar proceedings had had a Receiver appointed; that I did not desire to have a different Receiver appointed, but wanted to have the same Receiver affirmed in our suit, and as a matter of course expected to have the order granted. Judge Cardozo did grant the order, which was made and served upon Mr. Brown, so that Brown, the Receiver, should know that he was Receiver in one case as well as in the others. That was all I had to do with it, until a few days afterwards, when I had consultations with Mr. Baile in reference to the discontinuance of his suit; I advised him not to discontinue until he got his money. I advised him not to assign his claim, or substitute his attorneys, or change his status until he got his money. However, I received a note, or

memorandum in pencil—I do not remember which—from Mr. Baile, the day before or the day—(I am not certain which)—that this order appointing Mr. Jordan Receiver (Exhibit G.) was obtained, directing me substantially to consent to the arrangement by which Mr. Brown was to be removed and Mr. Jordan appointed. I sent for Baile, and I asked him what it meant, and I referred to my previous advice to him not to do it. I asked him if he had got his money, because if he had it was all very well; but I did not want him to do it unless he had his money, because I thought his money was, to a certain extent, secured to him. At all events, he had a good position and I wished him to understand his rights perfectly; that I did not want blindly to obey his written order obtained from him behind my back, without consulting me. He told me that Frederick A. Lane had been to him to get him to do this. Mr. Lane had not been to me, and I was surprised that any one would go to my client behind my back and make him do what I thought was injurious to his legal rights. However, Mr. Baile was clear about it, and he said substantially this—that Mr. Jordan's appointment would be such an advantageous thing, and getting rid of Mr. Brown would be such an advantageous thing, Mr. Brown being a lawyer, and, as he thought, unable to do anything to wind up the affairs of the Bank; that Mr. Jordan was Cashier of a Bank, I believe, and a man who understood such matters thoroughly and that he had perfect confidence that if Jordan got hold of the Bank everything would come out right, and he would get his money without law; and he was satisfied to do this thing. I said then there was nothing left but to pay me my fee; that I had a lien on this, and I ought to be paid. The next thing was that Mr. Lane or Mr. Sauzade, who was connected in some way with this Bank—what that connection was I do not know—came to me to get me to carry out this idea. They never told me anything about these orders, or about what the arrangements was that was going on. I knew absolutely nothing about it, and could not find out what had been going on in other suits. All they wanted to get out of me was the discontinuance of the Baile suit, and I would not give it until I was paid. I said Mr. Baile might do what he pleased, but that I had considerable trouble, and it was a heavy case, and that I wanted a counsel fee of $2,500. Mr. Sauzade gave me his word of honor that if I would direct a discontinuance of the suit, and get rid of the Baile matter, so that the arrangements might go through (which I did not know the details of) without interruption by the Baile case, he would see to it that I should get my counsel fee in a few days; if in no other way, that I would get it from the Bank; but that I must not let that stand in the way. I said that I had no security but his word, but as he was a gentleman, and as I was not desirous to be harsh about it, and we had to trust more or less in this world, that I would take his word about it. They

told me that the whole matter was to be closed in Martin & Smith's office. I told Mr. Redfield what I had done—that I had taken Baile's positive written order to discontinue the suit and give up his rights; that I had to do that; and, so far as our rights were concerned, that I had the word of honor of Mr. Sauzade for them. I authorized Mr. Redfield to go over to Martin & Smith's office to sign a discontinuance, and that ended the matter. Mr. Redfield reported that he had gone over and done whatever was necessary to get rid of the Baile suit. That is all that I know about that. What he signed, or what the terms between all these other people were, I never knew anything of until after, and then all I knew was some general statement of what Mr. Brown had received, and Mr. Vanderpoel had received; but the exact facts of what they had received I know for the first time to-night, when I first see this order.

Q. By whom was that order signed, with the consent? A. By Mr. Redfield; and I notice it is signed not as attorney by Baile; it as signed as attorney for some other parties I suppose the Baile suit was simply discontinued.

Q. You recollect your firm was substituted for some other party? A. I do not recollect anything about that. Yes, I recollect now of Mr. Redfield telling me that our firm had been substituted as attorneys for some other firm, but for what reason, or why, or wherefore, I do not know. My whole connection was a personal one between me and Baile. He was an old client, or brought to me by an old client, and I, individually, was taking care of his interests. That is all I know about it, except one other fact. In October some time I was retained; the papers in two cases of a man named Gillespie *v.* the Board of Brokers, and also against the Gold Board—one case in the Common Pleas and one in the Supreme Court—were handed to me by Mr. Redfield, I being the counsel of the office to try and argue the cases, and to argue a motion before Judge Barnard in the Supreme Court, to dissolve an injunction in this case. I got ready for the trial and the arguments, and I did argue the motion before Judge Barnard to dissolve the injunction, Mr. Marbury opposing. Subsequently I prepared myself for the trial before Judge Ingraham, Special Term. I attended the Court, and on suggesting some points which I thought were good, to Mr. Marbury, he decided to allow the whole thing to be discontinued, without costs to either party. At all events, they were discontinued; they were not tried. The case of Gillespie was not tried, although we were ready and waiting before the Judge. I know nothing about the attorney's work while the cases were at issue. The first I knew about it was when the papers were handed to me to get ready for the trial. I think that was all I knew of it from the beginning to the end.

Q. Do you know in whose handwriting this is? A. That is

Mr. Redfield's handwriting—"Barretts & Redfield, Attorneys for Lloyd & Hamilton, plaintiffs."

Q. Is that all you recollect about it? A. Yes, sir.

Q. Are you not mistaken; do you not remember receiving the $2,500? A. Oh, yes; I remember that, Mr. Sanzade did not keep his word as to paying me; I made an affidavit as to how it was in regard to my counsel fees, and I made application to Judge Cardozo for an order to have the money paid me by the Receiver, Mr. Jordan, claiming that I had a lien; that the honorable obligation was a legal one, and that I had not forfeited any right by what I had done. The Judge granted me the order and Mr. Jordan paid. The Judge demurred to granting the order until I fully explained how the matter stood. Now I believe that is all.

WILLIAM F. HOWE, recalled; examined by Mr. FULLEROON:

Q. I call your attention to the writ of Habeas Corpus, together with the Warden's return in the case of Adelaide Beaumont, (Exhibit A, 2d charge, W. W. N.,) the writ having been allowed on the 29th of September, 1871, and I ask you in whose handwriting are the words "Prisoner discharged October 4th, 1871," just above the initials of Judge Cardozo? A. I do not know.

Q. Are you familiar with Judge Cardozo's handwriting? A. I am.

Q. Are these words in his handwriting? A. No, sir; certainly not.

Q. Now I ask you whether that endorsement of the words "Prisoner discharged" is all there is upon that paper to indicate what was the result of the application? A. That is all that can be gathered from the face of this paper.

Q. Something else, I understood you, was done in that case? A. Yes, sir.

Q. Be kind enough to repeat what else was done which does not appear upon the writ? A. In this case there was a recognizance given to prosecute the writ of *certiorari* to the General Term of the Supreme Court.

Q. Then the prisoner was discharged on bail—was she not? A. Yes, sir, that is my impression; that writ is now pending and the case is entered on the calendar and a writ served upon the Clerk of the Court of Special Sessions.

Q. On the calendar of the General Term, now, for argument? A. Yes, sir.

Mr. FULLERTON:

I next call attention to a writ of Habeas Corpus—No. 68, in the year 1871—on the application of Daniel Healy; 4 adjournments, prisoner remanded and writ finally endorsed, "Bail con-

sented to in $1,000, A. Oakey Hall, D. A., June 12th, 1868," followed by the words "so ordered," in the handwriting of Albert Cardozo, "Albert Cardozo, J. S. C." In whose handwriting is that endorsement? A. The words "Bail consented to in $1,000, A. Oakey Hall, D. A., June 12th, 1868," are in Mr. Hall's handwriting.

Mr. FULLERTON:

I next call attention to a writ on behalf of Edward Lane—1868, No. 44—writ allowed by Justice Cardozo and admission of service by R. C. Hutchings, Assistant District Attorney, endorsed in the following words: "The within named, Edward Lane, is hereby discharged on bail to await the action of the General Term of the Supreme Court, September 25th, 1868, Albert Cardozo, J. S. C.," William F. Howe, attorney, endorsed: "Prisoner may be bailed pending the *certiorari* in one hundred dollars." In whose handwriting are the words "the within named, Edward Lane, is discharged on bail to await the action of the General Term of the Supreme Court?" A. In the handwriting of my partner, Mr. Hummel. The endorsement of service admitted, is in the handwriting of Robert C. Hutchings, who was then Assistant District Attorney, and which was a consent of bail in that case.

Q. The next writ of Habeas Corpus is in the case of Thomas Moran. William F. Howe, attorney; No 26; writ allowed by Justice Barnard; adjourned by Justice Sutherland; then the consent of Robert C. Hutchings, Assistant District Attorney, with this endorsement: "The within named Thomas Moran is hereby discharged, the District Attorney not objecting, bail having been given for his appearance at the General Term of the Court, July 17th, 1868. Another endorsement—"Discharged on bail. Albert Cardozo." The writing preceding the signature of Albert Cardozo is not not in his hand? A. No, sir.

Q. In whose handwriting is it? A. In my partner's hand; I cannot say that it all is.

Q. Is the handwriting of Hutchings in some of it? A. The insertion of the words "The District Attorney not objecting" is in Mr. Hutchings handwriting, by him.

Mr. FULLERTON:

The next is a writ on behalf of Peter McNally; William F. Howe, Attorney; allowed by Justice Cardozo; No. 60; endorsement, "Prisoner discharged on his recognizance, by consent of the Disirict Attorney, 5½ P. M., Oct. 31st, 1868." Dowling and Kelly, Justices.

The next is a writ on behalf of Ernest Caspar, allowed by Justice Cardozo; No. 2; after some adjournments endorsed, "The within named Ernest Caspar is hereby discharged on bail, the District Attorney having consented, January 11th,

1868. Albert Cardozo." In whose handwriting are the words preceding Judge Cardozo's name? A. Mr. Hummel.

Mr. FULLERTON:

The next is a writ in the case of Joseph E. Lynn, No. 3; writ allowed by Justice Cardozo; endorsement, "The prisoner is entitled to his discharge under decision of D. P. I." Who is D. P. I.? A. Judge Ingraham.

Q. Before whom was it argued? A. Judge Ingraham.

Q What decision was called in question? A. That of one Judge being present only: the Devine case was cited, reported in 11 Abbott. This case, I believe, was also reported.

Mr. FULLERTON:

That is endorsed, "Prisoner discharged, January 20th, 1868. Albert Cardozo."

The next is a writ on behalf of Nicholas Langdon, allowed by Justice Cardozo, endorsed, "Writ dismissed, and prisoner discharged on bail, January 20th, 1868. Albert Cardozo." The words "writ dismissed, prisoner discharged on bail," are in whose handwriting? A. In the handwriting of Mr. Blunt.

Q. The Assistant District Attorney? A. Yes, sir.

Mr. FULLERTON:

The next is a writ on behalf of Samuel Fulda; Justice Richard Kelly; No. 18; endorsed, "Prisoner discharged, May 23d, 1868. Albert Cardozo." William H. Nafis, attorney.

Mr. PARSONS:

There is no consent of the District Attorney on that?

Mr. FULLERTON:

No, I have read it as it is. The next is a writ on behalf of Michael Stoltz; writ allowed by Justice Barnard. "Prisoner discharged, having given bail, July 6th, 1968. Albert Cardozo." The words "prisoner discharged, having given bail in the sum of $500," are in the handwriting of Mr. Blunt.

The next is a writ on behalf of Fanny Price; No. 27; allowed by Justice Cardozo, endorsed, "I consent that the prisoner be bailed in the sum of $500. R. C. Hutchings, July 17th, 1868." Endorsed, "Prisoner discharged on bail. Albert Cardozo." The endorsement above Mr. Hutchings name is in his handwriting? A. Yes, sir.

Q. Who is the attorney in that case? A. No name is given.

Mr. FULLERTON:

The next is a writ on behalf of Daniel Gilman; writ allowed by Justice Cardozo, endorsed "The within Daniel Gilman bailed, to come to the Supreme Court General Term. July

23d, 1868. Albert Cardozo." Jacob Levi, attorney. In whose handwriting is the endorsement above the name of Albert Cardozo, relating to the discharge? A. That is Jesse Vanderpoel, now dead.

Q. What was he at that time? A. Assistant District Attorney; I recognize it by the "y." This has been written in pencil, and I think it is written over.

Mr. FULLERTON:

The next is in behalf of Ellen Hannon; No. 51; allowed by Justice Barnard. Attorney, John Quackenboss. "Prisoner discharged on bail, Oct. 18th, 1868. A. C."

Mr. TILDEN:

There is no consent there.

Mr. FULLERTON:

No, I read it all. The next is on behalf of George H. Kemp. William F. Howe, attorney. Endorsed, "Writ dismissed. Prisoner remanded. October 30th, 1868. That is No. 55."

The next is in behalf of Isaac Ritenburg, endorsed, "Let to bail in $100. A. C." Endorsed again, "Prisoner bailed December 11th, 1868. A. C." Samuel Hirsch, attorney.

The next is in behalf of Frank Donnelly, writ allowed by Judge Cardozo. Endorsed, "Prisoner bailed by consent of District Attorney. December 22d, 1868. A. C." Those words, with the exception of the initials, in the handwriting of Mr. Blunt.

The next is on behalf of Thomas Crawford, endorsed, "Prisoner discharged on $500 bail, to appear at the Court of General Sessions. December 26th, 1868. A. C." The endorsement, excepting the initials A. C., in the handwriting of Mr. Blunt. Sydney H. Stuart, attorney.

The next is a writ on behalf of Mary Gaylor; Wm. F. Stowe, attorney. Endorsed, "The within-named Mary Gaylor is hereby discharged on bail. October 6th, 1868. A. C."

The next is on behalf of Kemp H. Ellis; Wm. F. Howe, attorney. Endorsed, "The within-named Kemp H. Ellis is hereby discharged on bail. October 6th, 1868. A. C." Endorsement not in the handwriting of Judge Cardozo, except the initials.

The next is on behalf of Thomas Bevins, endorsed, "The within-named Thomas Bevins is hereby discharged on bail. October 5th, 1868. A. C." Endorsement not in the handwriting of Judge Cardozo.

The next is a writ on behalf of Charles Williams, endorsed, "The within-named Charles Williams is hereby discharged on $100 bail. September 28th, 1868. A. C." Endorsement not in the handwriting of Judge Cardozo.

By Mr. PRINCE:

Q. All the signatures are by him, are they not, Judge Fullerton?

By Mr. FULLERTON:

A. Yes, sir; and none of the endorsements are in his handwriting, except when otherwise stated.

The next is a writ on behalf of Wm. H. Foster, before Dowling and Kelly, allowed by Justice Barnard. Endorsement in the handwriting of Mr. Blunt. Writ dismissed. "Prisoner bailed in the sum of $500, to answer on appeal to Court of General Sessions. October 22d, 1868."

The next is in behalf of Mary Wilson, endorsed, "Discharged on bail, District Attorney consenting, January 18th, 1869. Albert Cardozo." That is in the handwriting of R. C. Hutchings.

The next is a writ on behalf of Michael Cleary, allowed by Justice Barnard. Wm. F. Howe, Attorney. Endorsed in the handwriting of Mr. Blunt, "Writ dismissed and prisoner remanded," February 10th, 1869.

The next is a writ on behalf of Francis Fuller. Lowry & Soren, Attorneys. Endorsed, "Prisoner discharged on $500 bail, February 10th, 1869," in the handwriting of Mr. Blunt.

The next is a writ on behalf of Thomas Gilton. Wm. F. Howe, Attorney. Endorsed, "Writ allowed by Judge Barnard;" further endorsed, "Writ dismissed and prisoner remanded, February 27th, 1860." Wm. F. Howe, Attorney.

The next is a writ on behalf of David Flaherty, endorsed, "Prisoner discharged on $500 bail, by consent of District Attorney, April 19th, 1869," in the handwriting of Mr. Blunt.

The next is a writ on behalf of Peter McDonald, endorsed, "The within named Peter McDonald is hereby discharged on bail. I consent to bail. George W. Blunt; Wm. C. Gover, Attorney." April 21st, 1869.

The next is a writ on behalf of John Barry; Wm. F. Howe, Attorney; endorsed, "The within named John Barry is hereby discharged on bail, April 27th, 1869;" further endorsed, "I consent to bail. George William Blunt, Assistant District Attorney."

The next is a writ on behalf of Patrick Lalor, endorsed, "Writ dismissed and prisoner remanded, April 29th, 1860." Wm. F. Howe, Attorney.

The next is a writ on behalf of Abraham David, alias "Big Michael," endorsed, "Prisoner discharged on $500 bail, by consent of the District Attorney, May 15th, 1869, A. C.," in the handwriting of George William Blunt.

The next is a writ on behalf of George Hughes; William F. Howe, Attorney; endorsed, "Prisoner discharged on $500 bail, the District Attorney having consented, May 19th, 1869. Thomas W. Clerke."

Q. Is that in the particular handwriting of Judge Clerke? A. That is, sir.

Th next is a writ on behalf of Ferdinand Harrison; A. C. Phillips, Attorney; endorsed, "Prisoner discharged on $500 bail, by consent of the District Attorney," in the handwriting of Mr. Blunt.

The next is a writ on behalf of George Gorden; Justices Dowling and Kelly holding the Court, March 11th, 1869; Howe & Hummel, Attorneys; writ dated May 19th, 1869; allowed by Justice Clerke; endorsed, "The within named George Gorden discharged on bail, by consent of the District Attorney, May 20th, 1869. Thos. W. Clerke."

Q. Is that in Judge Clerke's handwriting? A. Both signatures are in Judge Clerke's handwriting.

By Mr. NILES:

Q. Are they accompanied with a writ of *certiorari?* A. I cannot tell; there is nothing here to indicate it, but I presume it was.

By Judge FULLERTON:

Q. May not all these cases have been accompanied by a writ of *certiorari*, although it does not appear upon the writ of Habeas Corpus? A. Yes; the probability is that when they are discharged on bail there was a writ of *certiorari*.

Q. Don't you know of instances where the writs are endorsed simply "Discharged," where they were discharged on bail? A. Yes, sir; in the Beaumont case.

By Mr. PARSONS:

Q. Do you mean to testify that bail was given in the Beaumont case? A. I cannot state any particular case that bail was given in, unless I had the recognizance here.

A. You remember the Beaumont case very well, don't you? Q. I remember it.

Q. Well, do you state that bail was given in that case? A. Yes, I remember it.

Judge FULLERTON:

The next writ is a writ in behalf of Frederick Dickel; Howe & Hummel, attorneys; endorsed, "The within named Frederick Dickel is hereby discharged on bail, the District Attorney having consented."

The next is a writ in behalf of Samuel P. Barrett; Charles S. Spencer, attorney; endorsed, "Discharged on bail, the District Attorney having consented," in the handwriting of Mr. Blunt, signed "A. C."

The next is a writ on behalf of Edward Holmes and Robert D. Daniels, endorsed, "The within named Edward Holmes dis-

charged on bail, the District Attorney having consented, June 5, 1869. A. C."

The next is a writ in behalf of Emma Williams, endorsed, "Prisoner discharged on bail, the District Attorney having consented, A. C." Endorsement not in Judge Cardozo's handwriting.

The next is a writ in behalf of Thomas Gilton, endorsed, "Prisoner discharged on bail, the District Attorney having consented, June 5, 1869. A. C."

The next is a writ on behalf of John Brown and William H. Stevens, endorsed, "I consent that the prisoner be discharged on his own recognizance. George W. Blunt, June 10, 1869." Endorsed still further. "Discharged accordingly. A. C."

The next is a writ in behalf of John Kinsella, endorsed, "The within named John Kinsella is hereby discharged on bail, the District Attorney having consented." Not in Judge Cardozo's handwriting.

The next is a writ in behalf of James Johnson; William F. Howe, attorney; endorsed, "Writ dismissed and prisoner remanded. July 9, 1869. A. C."

The next is a writ in behalf of James Johnson; Howe & Hummel, attorneys; endorsed, "Writ discharged and prisoner remanded to the Penitentiary. Albert Cardozo."

The next is a writ on behalf of Henry W. Wilson, endorsed, "The within named Henry W. Wilson is hereby discharged on bail, the District Attorney having consented. August 10, 1869."

The next is on behalf of Benjamin C. Smith; S. H. Stewart, attorney; endorsed. "Upon giving bail in $500, prisoner discharged. August 10, 1869."

The next is on behalf of Henry Sundmacher, endorsed, "Prisoner discharged on $500 bail, by consent of District Attorney." In Mr. Blunt's handwriting, signed, "A. C." David Levy, attorney.

The next is in behalf of Thomas Maguire, endorsed, "Writ dismissed and prisoner remanded." In the handwriting of Mr. Blunt, "September 16, 1869. A. C.".

The next is on behalf of John Norton, *alias* John Smith; Howe, attorney. Writ allowed by Judge Clerke; after three adjournments endorsed, "Prisoner remanded by Judge Cardozo." Howe, attorney.

The next is in behalf of Samuel L. Cohen, endorsed, "The District Attorney having consented, the within named Samuel Cohen is discharged on bail. September 29, 1869. A. C."

The next is on behalf of Adam Healhoof, endorsed, "Prisoner discharged on bail by consent of District Attorney. A. C."

The next is on behalf of James Farley. Writ allowed by Justice Clerke; endorsed, "Writ dismissed and prisoner remanded." Howe & Hummell, attorneys.

The next is on behalf of Thomas Murphy, endorsed, "Writ

dismissed and prisoner remanded. October, 1869." Howe & Hummel, attorneys.

The next is on behalf of John Earle, endorsed, "Prisoner discharged on bail, the District Attorney having consented. October 21, 1869."

The next is in behalf of Cornelius S. Hale; Wm. F. Howe, attorney; endorsed "Writ dismissed and prisoner remanded, October 18, 1869," in Mr. Blunt's handwriting.

The next is in behalf of Thomas Flaherty, endorsed "The District Attorney having consented, the within-named Thomas Flaherty is hereby discharged on bail, October 13, 1869. A. C."

The next is in behalf of William Donovan and Michael Golden, endorsed "The within-named William Donovan is hereby discharged on bail, the District Attorney having consented, May 24, 1869. A. C."

The next is in behalf of Michael Varley; Howe & Hummel, attorneys; endorsed "Writ dismissed and prisoner remanded, October 16, 1869. A. C."

The next is in behalf of Joseph Regling, endorsed "Writ dismissed and prisoner remanded, October 19, 1869." Howe & Hummel, attorneys.

The next is in behalf of Paul Brudi; Howe & Hummel, attorneys; endorsed "Writ dismissed, prisoner remanded, October 21, 1869."

The next is in behalf of Thomas Powers, endorsed "The District Attorney having consented, the within-named Thomas Powers is hereby discharged on bail. November 21, 1869. A. C."

The next is in behalf of Philip Broderick, endorsed "The District Attorney having consented, the within-named Philip Broderick is hereby discharged on bail. November 4, 1869. A. C."

The next is on behalf of William Moore and John Cooley, endorsed "Writ dismissed and prisoner remanded. November 22, 1869." Howe & Hummel, attorneys.

The next is in behalf of Michael O'Brien, John Sands and Alexander Mathews, indorsed "The within-named Michael O'Brien is hereby discharged on bail. November 13, 1869."

The next is in behalf of Julius Tobias, endorsed "The within-named Julius Tobias is hereby discharged on bail. November 13, 1869. A. C."

The next is in behalf of William J. Lines, endorsed "The within-named William J. Lines is hereby discharged on bail, the District Attorney having consented. November 22, 1869."

The next is in behalf of Anna Wilson, endorsed "The within-named Anna Wilson discharged on $500 bail. A. C." Howe & Whitmore.

The next is in behalf of Henry Vogel, endorsed "The within-named Henry Vogel is hereby discharged on bail, the District Attorney having consented. November 25, 1869."

The next is in behalf of Mary Ann Ward and John Casey, endorsed "The within-named John Casey discharged on bail, the District Attorney having consented. November 26, 1869." Endorsed still further, "The within-named Mary Ann Ward discharged on bail, the District Attorney having consented. November 26, 1869." Signed by Judge Cardozo in each case.

The next is in behalf of John McDonnell, endorsed "The District Attorney having consented, the within-named John McDonnell is discharged on bail. December 1, 1869."

The next is in behalf of Thomas Noble, endorsed "Writ dismissed and prisoner remanded. January 4, 1870." Howe & Hummell, attorneys.

The next is in behalf of Henry Murphy, endorsed, "The District Attorney having consented, the within-named Henry Murphy is discharged on bail."

The next is in behalf of Thomas Sheppard and Edward Forrest Monyea, endorsed "The District Attorney having consented, the within-named Edward Forrest Monyea is discharged on bail."

The next is in behalf of George Warren, endorsed "Writ discharged and prisoner bailed. July 10, 1871.

Q. Is that Mr. Jerome's handwriting? A. Yes, sir.

The next is in behalf of Hortense Watson, endorsed "Writ dismissed and prisoner remanded, July 20th, 1871." Howe & Hummel, attorneys.

The next is in behalf of Jacob Silverstein, endorsed, "Writ dismissed and prisoner discharged on bail, by consent of District Attorney, August, 1871. A. C."

The next is in behalf of Michael McMahon, endorsed, "Prisoner discharged on bail, District Attorney consenting, July 18, 1871. A. C."

The next is in behalf of Martin Dobbs, endorsed, "Writ dismissed and prisoner remanded. A. C." Howe & Hummel, attorneys.

The next is in behalf of John Collins. "Prisoner bailed and discharged. A. C." Harnett & Flanagan, attorneys.

The next is in behalf of Adam Winter, endorsed, "Writ dismissed, prisoner remanded, July 24th, 1871.

The next is in behalf of Henry Ornance. Conviction May 1st, 1871, Dowling and Shandley, Justices. The writ of Habeas Corpus was issued on the 7th of June, 1871 Howe & Hummel, attorneys. Endorsed, "Writ dismissed, and prisoner bailed, June 8th, 1871, John R. Brady, Justice.

The next is in behalf of John Clark; Dowling and Shandley, Justices, May 1st, 1871; the date of the conviction; another in behalf of Herman Gerdis, convicted at the same time and before the same Justices, both on confesston, for keeping disorderly houses; writ allowed by Justice Cardozo. Endorsed "Prisoner

bailed June 5th, 1871, John R. Brady, J. S. C. Howe & Hummell, attorneys; 12th of May."

The next is in behalf of William Dondon, endorsed, "Writ dismissed and prisoner remanded. Howe & Hummel, attorneys."

The next is in behalf of Thomas Lanagan, endorsed, "Writ dismissed. A. C." Howe & Hummel, atttorneys; January, 1871.

The next is in behalf of Frank Kern, before Dowling and Shandley, Justices; conviction 14th of March, 1871; writ issued 24th of March, 1871; endorsed, "Writ dismissed and prisoner remanded, April 12th, 1871, J. R. B."

The next is in behalf of Victor Allen, January, 20th, 1871, endorsed, "Writ dismissed and prisoner remanded; A. C." Howe & Hummel, attorneys.

I find eight more endorsed "Prisoner discharged on bail by consent of the District Attorney," in 1870 and 1871. They are all endorsed, "discharged on bail" excepting one, and that is simply "discharged," and I find four other cases here in which the prisoners were remanded where Howe & Hummel were the attorneys, in 1871. This may go on the record as applying to all of the cases which I have produced; the writs of Habeas Corpus were issued after final conviction; in each case the signature to the discharges are all Justice Cardozo's when not otherwise stated.

By Mr. NILES:

Q. Do you know whether the Judges that have held the Special Sessions have ever known of these discharges, any of them? A. I do not, other than from newspaper reports mostly. The Linn case was reported in the newspapers, I remember.

Q. Did you ever speak to them about having got a prisoner discharged on such grounds? A. No, sir; I would never even interpose an objection when I saw the Court constituted with one Judge.

Q. Did you ever hear it interposed? A. I have heard counsel object in Court, but I never would.

Q. To whom have you heard the objection made in Special Sessions? A. I think Mr. Brooks took the objection before Judge Dowling; I won't tell you positively that it was Mr. Brooks.

Q. Did you ever hear it made before Judge Shandley? A. I don't think that I have.

By Mr. PRINCE:

Q. In these cases where bail was given and recognizances taken for the appearance of the party discharged at the Genenal Term, is it the custom that they do appear at the General Term?

A. The statute does not provide for them to appear at the General Term.

Q. The question was whether, in these cases where bail was given and recognizances taken for the prisoner discharged to appear before the General Term, it was the custom for them to appear before the General Term? A. The recognizances do not so read. The recognizances are that they are to abide the order of the Court; it is not for their appearance in the General Term. The General Term will either affirm the conviction or sustain the application to quash.

Q. Do those cases ever come up in the General Term—have they in the last four years? A. Yes sir; the Collins and Edwards case.

Q. When? A. About two months since, I think.

Q. How many of those cases have you known, which were, according to the language in the document, to be heard at the General Term? A. Very many.

Q. How many have you known of where they were heard? A. Only three.

Q. Then the discharge of the prisoner in that way is virtually, under the custom in this city, an absolute discharge? A. It has not been prosecuted by the District Attorney after those discharges.

Q. It has amounted to an actual discharge? A. Yes, sir; for the reason that only one Judge being present, I presume they did not consider it policy to hazard the public exposure of it in the General Term. I don't know; that is a mere expression of my opinion.

By Mr. FULLERTON:

Q. The prize fighters, Edwards and Collins, were discharged by the General Term, were they not? A. Yes, sir.

Q. And not by Judge Cardozo? A. No, sir.

By Mr. PRINCE:

Q. You say very many of those cases. Do you suppose there have been a hundred within four years? A. Yes, sir.

Q. Do you suppose there have been three hundred within four years? A. Yes, sir.

Q. Then not one case in a hundred has ever really gone to the General Term, of those that were sent there? A. That would be the average, I suppose.

By Mr. PARSONS:

Q. Edwards and Collins were not discharged upon any imperfect constitution of the Court of Special Sessions, were they? A. No, sir.

Q. There was a regular appeal there upon exceptions and upon the weight of evidence, was there not? A. Yes, sir; It

was pronounced by Judge Ingraham in giving the decision of the Court, stated to Mr. Sullivan, who was then present, that the question that was presented as to the constitutionality of that Court had considerably embarrassed the Supreme Court, and that the District Attorney should immediately notify the Justices of the Special Sessions thereafter to hold it with two Justices, because they did not believe that the Court was properly constituted with one. He abstained for the reason that it would operate as a general jail delivery, in giving that as a part of the decision of the Court, and held that the case showed that the Court below had convicted without jurisdiction.

Q. You mean without sufficient evidence to warrant a conviction? A. Yes, sir.

Q. That is what you mean by without jurisdiction? A. Yes, sir.

Q. Within what time have these last three cases that you refer to gone to the General Term? A. Within the last four or five months.

Q. All of them? A. Yes, sir.

Q. You never knew one heard at the General Term before? A. No, sir.

Q. Can you fix it any nearer than two or three months? A. No, sir.

Q. The Devine case was some years ago before the period you speak of? A. The Devine case was at Chambers, before Judge Sutherland. It was for Habeas Corpus alone. There was no *certiorari* in that.

By Mr. FULLERTON:

Q. Has not that case been acted on since? A. Yes, sir, invariably. I took it as a standard case, as a test case, and used that as authority to the other Judges of the Supreme Court.

By Mr. OWEN:

Q. I understand you to say there was no *certiorari* in that case? A. Not any.

By Mr. STICKNEY:

Q. For how long has Judge Cardozo been sitting as a member of the General Term? A. I don't know.

Q. Since January, 1870, all the time, has he not? A. I think so.

Q. And there is where these *certioraris* would come up for hearing, if they came up at all? A. Yes, sir, unless those that were returnable in the General Sessions.

Q. And those would be taken by appeal before the final judgment was entered at the Special Sessions, would they not? A. No, sir, not in all cases.

Q. Do you mean that the Supreme Court can grant a writ of

certiorari returnable at General Sessions? A. Yes, sir, under the law of 1859.

Q. Whose fault is it that these cases are not taken up to the General Term, if anybody's? A. The District Attorney's, I presume.

By Mr. FULLERTON:

Q. It is not the fault of the Justice of the Supreme Court? A. No, sir.

By Mr. STICKNEY:

Q. Is not that *certiorari* that you speak of under the same article of the Revised Statutes as this *certiorari*, returnable at the General Term of the Supreme Court? A. No, sir; it is an express provision of the law of 1859, which says that the writ of *certiorari* shall be granted upon application of the party convicted to Courts, or to Sessions; and Mr. Hall once contended that that did not apply to the Court of General Sessions.

Q. The Divine case was under the Statute of 1858, wasn't it? A. Yes, sir.

Q. Which required that the three Justices should sit? A. Yes, sir; the old Act.

Q. And then the Act of 1870 entirely re-constituted the Court, didn't it? A. Yes, sir; reorganized it. That required three Judges, and they only had two; then it required two, and they only had one.

By Mr. NILES:

Q. Was there any provision in that law of 1858 for the absence of either of the three Judges? A. Not any.

By Mr. STICKNEY;

Q. Were there more than two grounds on which any of these discharges were granted—that is, one ground that there was a writ of *certiorari* allowed and then the prisoner could be admitted to bail, and the other ground being that on a writ of Habeas Corpus—you showed that as fact the Court was illegally constituted and had no jurisdiction? A. Yes; there were some instances in which the record omitted to state where the offence was committed.

Q. Do you remember any such case as that? A. I cannot give any such case.

Q. Is there any other ground? A. Not any, except the general objection which I have as to the legality of the Court itself, even with two Justices. That I set out in every petition.

Q. For Habeas Corpus? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Then the practice in suing out a writ of *certiorari* is, that

the petition or affidavit is certified by the Justice? A. Yes, sir.

Q. The writ must be taken out within ten days after the conviction? A. Yes, sir.

Q. Then the affidavit or petition, with the writ, is transmitted to the Court of Special Sessions? A. That is under the old practice, not under the practice since the law of 1859.

Q. I mean in the case of a writ of *certiorari*, returnable to the General Term of the Supreme Court? A. No, sir; the petition would simply be filed by the Clerk of the Judge to whom we made application.

Q. Can you refer to that statute; is that the statute of 1859? A. It is the statute of 1859.

Q. Then the writ is transmitted to the Court of Sessions? A. Served upon the Clerk of the Court.

Q. Then the return is made from the Court of Special Sessions? A. Yes, sir; either the General Term or the General Sessions.

Q. And then, in those cases, do you know of any statute that gives any jurisdiction to discharge the prisoner on bail, without sureties? A. No, not any.

Q. Then in case of a writ of Habeas Corpus, without a writ of *certiorari*, what ground did Judge Cardozo ever state as the ground of granting a discharge in any one of these cases? A. The ground of the absence of one Justice at the time of conviction.

Q. And then did he state that the Court was, in his opinion, illegally constituted in that case? A. Yes, sir; that the Court had no jurisdiction.

Q. Can you give the name of any case where he ever said that? A. I cannot, any specific case; it was so generally.

Q. Can you give the name of any case where he ever wrote an opinion to that effect? A. No.

Q. Can you give the name of any case in which any Justice ever wrote any opinion to that effect? A. I think Judge Sutherland did.

Q. In what case? A. It was some time since.

Q. More than two years ago? A. Oh, yes.

Q. Then it was before the Act constituting the Court as it now is? A. Yes, sir.

Q. Since the Act constituting the Court as it now is, do you know of any other Justice than Justice Cardozo who has delivered an opinion to that effect? A. Judge Ingraham did, in the Huber case.

Q. We will come to that presently. A. No one save that.

Q. But you do know that Judge Cardozo has delivered an opinion at General Term, holding that the Court was legally constituted, don't you? A. Yes, sir; I was very much surprised at it.

Q. Can you state what took place on any occasion when one of these prisoners was discharged on a writ of Habeas Corpus, on the ground that the Court was illegally constituted? What was done and what was said on any of those occasions? A. The return would be handed to the Court, and I would state the return only showed the presence of one Judge.

Q. In all cases? A. No, not in all cases. I will confine myself to cases in which the return only showed one Judge. Mr. Jerome would almost invariably consent, in that instance, to the discharge, without a question, upon the authority of the Devine case.

Q. Which did not apply? A. It did; that was the ground that Judge Sutherland took.

Q. Do you remember the name of any case in which Mr. Jerome appeared and consented to the discharge on that ground? A. I cannot name any particular case.

Q. Can you give the words that Mr. Jerome used on the occasion of any such case? A. He said that it was ascertained that there had only been one Judge in such case, or perhaps he would endorse my statement as being correct.

Q. Mr. Jerome did not appear in the Court of Special Sessions at the trial of any of these matters, did he? A. No.

Q. Then what knowledge had he on that point? A. I presume he had made inquiry in the interim of the adjournment. After a return there generally would be an adjournment to enable them to ascertain whether there was one or two Judges present.

Q. In those cases where the record recites the presence of two Judges on the hearing on Habeas Corpus, in each of those cases did you state to the Court that there was only one Justice present, in point of fact? A. No; because in some instances there would be two, and in those cases Judge Cardozo would remand the prisoner.

Q. In the cases where Judge Cardozo discharged the prisoner, the record showing the presence of two Justices in each of those cases, did you state that there was in fact only one Justice present? A. Yes, sir; I presume so.

Q. Will you swear to that positively? A. I would not swear that in each particular instance, but he certainly could not have a discharge without that fact had been first stated by me, and then conceded by the District Attorney.

Q. Do you remember the name of any case where such a thing took place, that you made that statement? A. No, sir; it was general. That was the foundation for the application for a writ.

Q. Your petition in such cases shows that? A. Yes, sir; in all cases.

By Mr. NILES:

Q. Does the same objection alleged here against the constitution of the Special Sessions in the petition in the case of Silas Gordon, apply equally to the constitution of the General Term of the Supreme Court? [Referring to a petition for a *certiorari* in the case of Silas Gordon, filed September 29th, 1871.] A. Well, I am not lawyer enough to give you that opinion. I will give you my impression.

Q. In that particular case there is no allegation in regard to the Court being constituted of a single Justice in the absence of the other, is there? A. No, sir; but there is an allegation that the Court, as constituted was illegal, and the grounds set forth.

By Mr. VEDDER:

Q. You were the attorney for many of these parties who sued out these writs of Habeas Corpus, were you not? A. Yes, sir.

Q. Did you, in suing out those writs, always invoke some proposition of law by which you believe that the party ought to be discharged? Yes, sir.

Q. In your opinion as a lawyer, were they properly discharged upon the law? A. Yes, sir; in every instance.

Q. In all these cases where you sued out the writs, then, you relied more upon the soundness of the law than you did upon the easy virtue of the Court before whom you might appear? A. I did not give the Courts credit for possessing easy virtue. I relied, as you state, upon the soundness of the law, and believe to-day that every prisoner at this moment in the Penitentiary is illegally held there.

Q. And this proposition of law upon the argument you always invoked, and the District Attorney was there to oppose, if he chose, or might be? A. By the District Attorney I mean his representative. Judge Garvin, I suppose, went there once in two years.

Q. There was no legal impediment in the way of the District Attorney appealing from the decision of these Judges in discharging these prisoners, if he saw fit to do so? A. No, sir.

By Mr. STICKNEY:

Q. There is a certified copy of the petition for the writ of *certiorari* in case of John and Thomas McGinnis. Is there in that petition anything said to show that one Justice in fact was absent? A. No, sir.

By Mr. VEDDER:

Q. Objections were made to the jurisdiction of the Court in some case where they were tried and convicted before one Justice? A. Yes, sir.

Q. And in some of these cases there were two Justices, as the statute prescribed? A. Yes, sir.

Q. Notwithstanding that, you claimed that there were other jurisdictional defects? A. Where there were two Justices, and upon the ground set forth in this very petition.

Q. And, as a lawyer, you believed those grounds to have been found that you urged? A. Yes, sir.

By Mr. NILES:

Q. Did Judge Cardozo ever decide that that act was unconstitutional? A. Not in a written opinion.

Q. Did he ever orally announce that as his conclusion? A. I think so. I think nearly all of the Judges have, to that effect.

Q. That the statute itself was unconstitutional? A. The statute was a part of the tax levy constituting this Court of Special Sessions.

By Mr. TOBEY:

Q. It was put into the tax levy, was it? A. Yes, sir; tacked on the foot of it.

By Mr. STICKNEY:

Q. Is there any allegation in that petition that the Court was constituted with only one Justice, (handing witness a paper)? A. No, not that it was constituted with one, but that it was illegally constituted.

Q. Have you, in any of these cases, had an allegation in your petition for the writ of Habeas Corpus that the Court was in fact constituted with only one Justice? A. Yes, sir.

Q. Here are a great many of your petitions—certified copies. Can you turn to any one of them? A. (Refering to petitions), Number 20, James A. McGuire.

Q. Filed when? A. Filed the 27th of March, 1871.

Q. Do you know whether he was discharged? A. I do not; It sets out "Not convicted before any tribunal of competent criminal jurisdiction."

Q. Where is the allegation in that petition that the Court was really held by only one Justice, although the record states the presence of two? A. It does not state the specification.

Q. That is what you stated? A. Not using those words; simply that the party was not convicted before a Court of competent criminal jurisdiction.

Q. I will repeat the question. Is there a single case where your petition recites that there was in fact only one Justice, although the records showed the presence of two Justices? A. I don't know that there was in the original petition; it was covered by that remark or that statement.

Q. In open Court? A. No in the petition itself, that the conviction was illegal, and that the party was not convicted before any Court of competent criminal jurisdiction.

Q. Then will you examine and see whether all of those peti-

tions upon the writs of Habeas Corpus are not drawn after the same form? A. They are—without looking at them.

Q. Whether the Court was constituted in fact, with one Justice or with two? A. Yes, sir, the petition would be the same, and I have always held that the Court was illegally constituted.

By Mr. TILDEN:

Q. You make your allegations broad enough to cover every case? A. I think so; it is my intention.

By Mr. STICKNEY:

Q. Are not the petitions for the writ of *certiorari*, in every case almost verbatim copies? A. They are, for I had a copy made in a book, and would simply insert the name of the party in each case almost alike.

Q. Then you mean to say that when the return showed a conviction before two Justices, and the petition did not allege that there was only, in fact, one Justice present, and there was no traverse of the return, that then Mr. Justice Cardozo discharged these prisoners on your oral statement, that there was only one Justice present assented to or not by the District Attorney? A. No, we would traverse the return where there would only be one Justice present. If the return showed two, I would traverse it. Then there would be an adjournment, and Jerome would take it under advisement as to whether there was one or two Judges.

Q. Can you give the name of any of these cases where there was a traverse to the return? A. A written traverse?

Q. Yes, sir. A. No, sir.

Q. Then it was an oral statement? A. Oral traverse.

Q. I will repeat the question. You mean to say that where the return showed a conviction before two Justices, and neither your petition nor traverse showed that in fact one Justice was present, Mr. Justice Cardozo would discharge the prisoner on your oral statement, assented to by the District Attorney's clerk who was never present in the Court of Sessions? A. Assented to by the District Attorney's representative.

Q. And in all those cases, then, you made an oral statement, that there was only one Justice present as a matter of fact? A. Not in all the cases.

Q. In all those cases where the conviction cited the presence of two Justices? A. No, sir; in some instances I ascertained myself that there were two, and then, as the record shows, the prisoner would be remanded.

Q. And in all cases where the prisoner was discharged, the record showing a conviction before two Justices, in all those cases you stated in Court that, as a matter of fact, there was only one present? A. Yes, sir.

Q. That statement, of course, was true, then, to your knowledge? A. Certainly to my knowledge.

Q. Can you name a single case where that took place? A. I cannot give you the name of any one case.

Q. Do you remember a single case where there was a conviction, the record showing the presence of two Justices, when in fact there was only one present? A. No, sir; I cannot give you the name of one. Yes, I think the Beaumont case there was only one Judge present, Judge Dowling. I tried that case myself, and that is the reason I know.

Q. Did the record there recite the presence of two? A. That I cannot tell.

Q. As a matter of fact it did not? (Showing witness the paper.) A. It only recites one.

Q. Then can you give the name of any case where the record recites the presence of two Justices, and in which to your knowledge there was only one present? A. No, I cannot; for the reason, I have had so many cases, and so many other cases that it is impossible to remember.

Q. Have you any register? A. I have not.

Q. Do you keep a record of these cases in any shape? A. No, sir; mine is exclusively a criminal business.

Q. Have you any means of ascertaining from books, or records, or papers of your own, whether as a matter of fact there was only one Justice present in any of the cases where the record recited there were two? A. Nothing but these records.

Q. Do you mean the petitions? A. I mean the petiton.

Q. Those don't allege it, any of them, do they? A. They don't allege specifically. As I said before, it would be comprehended in that general statement.

Q. In those cases where writs of *certiorari* were allowed, have you any record or register, or memorandum in your office or here, showing whether recognizances were actually given? A. No, sir.

Q. Can you remember the name of any case in which you can state positively that a recognizance was given? A. There were several, but I cannot remember the names now. I have seen the sureties sworn and the recognizances signed. I cannot give you the name of one.

Q. Do you remember the case of Joseph Silverstein, whether there was a recognizance there? A. I do not.

Q. You do remember, I take it, that some of the prisoners were discharged on their own recognizance? A. Yes, sir, very many.

Q. Without sureties? A. Without sureties.

Q. And in such cases was a bail bond actually executed? A. I never knew a bail bond to be executed where the prisoner was discharged on his own recognizance in any Court.

Q. During the year 1871, can you give the name of any case in which you or your firm obtained the discharge of a prisoner after final conviction before the Court of Special Sessions from any other Judge except Judge Cardozo and Judge Barnard? A. Between what time?

Q. During the year, 1871? A. Oh, yes; I think Judge Brady.

Q. There were one or two mentioned here; can you name any other case? A. Judge Barbour in the Superior Court, McCunn, I believe, and Judge Ingraham. I am not stating this positively. I am giving you the best of my impression now.

Q. The question was whether you can name any case? A. No, I cannot.

Q. In those cases which were mentioned here, where Judge Brady discharged a prisoner, was not a recognizance taken with sureties? A. I cannot tell you that. I do not know what cases they were.

Q. Can you state positively that you got three prisoners discharged during the year 1871, after final conviction, from any Justice of the Supreme Court except Judge Cardozo? A. I cannot state without reference to these records; they will show for themselves; my impression is, yes.

Q. You cannot state positively? A. No, sir.

Q. Can you name one case, where the discharges were granted by the other Justices, where there was not a writ of *certiorari*? A. There were two cases before Judge Sutherland.

Q. My question is, in the year 1871. A. I cannot, sir.

Q. You got these discharges from Justice Cardozo during every month, did you not? A. That I don't know.

Q. Have you any doubt on that point? A. I rather think that I did.

Q. Regular applications of that kind, on matters of that kind, are made before the Judge sitting at Chambers, are they not? A. No, sir; in writs of Habeas Corpus, we get employed immediately after conviction. I would endeavor to get my Habeas before the party would be sent away the next morning; hence, I would go early to the Supreme Court building. I was generally there by nine.

Q. In most of these cases there have been repeated adjournments after the writ was allowed? A. Yes, sir.

Q. And the final hearings, when the discharge was granted, have been in almost every case by Judge Cardozo, have they not? A. He allowed the writ.

Q. I say the discharge? A. The majority of the cases.

Q. And you cannot say there were but three or four before any other Judge in the Supreme Court? A. There must have been more than that.

Q. Can you say positively? A. No; I cannot. I cannot even tell what Judges they were.

Q. Would not those hearings, after adjournment, regularly come on to be heard at Chambers? A. Not necessarily.

Q Would that not be the ordinary practice? A. I don't know that it would. I have had them at Special Term—Oyer and Terminer more frequently than any other.

Q. Did not you have many of these prisoners discharged in room 13? A. No, sir. I don't know as I had one discharged in room 13. My partner may have had, but I never had one, to my recollection, in room 13.

Q. Can you be positive that you did not? A. Yes, sir. I am positive as to that.

Q. And that all of them were had when Judge Cardozo was holding regular terms of Court? A. Oyer and Terminer or Special Term.

Q. All of them? A. Yes, sir; in each case, without doubt, and the same before other Judges.

Q. Do you remember the case of Mrs. Beaumont, which has been mentioned? A. No, sir.

Q. Do you remember how many successive writs of Habeas Corpus were granted on that occasion? A. I think two.

Q. There were in fact three. Do you remember how many times Mrs. Beaumont was brought up to the city from Blackwell's Island on those writs? A. Four or five times.

Q. Not more? A. I can't say. The adjournments will show on the writs.

Q. Did you have any conversation with Mrs. Beaumont before you obtained the first writ, as to the terms on which you would obtain her discharge? A. No; my partner did.

Q. Did you receive the payment of $1,000 from her? A. No, sir. I never received any money and I never paid any.

Q. Did you receive at any time any money from her? A. My partner, I think, received $1,700 instead of $1,000.

Q. Did he not receive more than $1,700? A. No, sir.

Q. Are you certain? A. I did not see any money paid, but inasmuch as I believe him.

Q. Don't you know that you or your firm received $3,750 in that case? A. No, sir.

Q. You received $1,000, did you not, which was paid on the first time? A. Yes, sir.

Q. Which money she got from the Savings Bank when she was brought up from the Island on one of these writs of Habeas Corpus? A. That I don't know. I know that I did not receive it in the office until after the discharge. Some one said that she came and paid it there to him.

Q. And how positive can you be that your firm received no more than $1,700? A. Unless my partner cheated me, I don't impute that to him. I am positive that that was all that I ever heard was received in my office.

Q. And you had none of the conversations with her about the terms of obtaining the discharge? A. I believe once, when she was in the District Attorney's office, I spoke to Mrs. Beaumont in regard to money.

Q. What was said then? A. That was the time that I told

her that my fee would be $1,000 to obtain her discharge and carry her through the case. That was for her.

Q. You finally charged $1,700 for her discharge, did you? A. No, sir. Her husband was arrested at the same time. Wm. Beaumont I think his name was.

Q. Did the agreement, then, as to $1,000 fee include the discharge of her husband as well as herself? A. No, sir.

Q. What was the agreement about his discharge? A. That was not made until after her liberation.

Q. What was that agreement? A. I believe to pay $700. I think so.

Q. Are you positive? A. No; I did not make the arrangement.

Q. Did not your firm for the two—Mrs. Beaumont and her husband—receive $3,750? A. No, sir; $1,700 was what my partner informed me what he received, and I don't think he received any more.

By Mr. TOBEY:

Q. That is in both these different writs? A. Yes, sir.

By Mr. PARSONS:

Q. In Mrs. Beaumont's case was there any *certiorari*? A. Yes, sir.

Q. Are you quite sure about that? A. Oh, quite sure.

Q. Do you mean to state that you ever saw a *certiorari* in her case? A. Yes, sir; had it in my hand, and I am quite sure, morally sure, it was served.

Q. Who signed it? A. That I cannot tell. I know a *certiorari* was issued in Mrs. Beaumont's case.

By Mr. STICKNEY:

Q. Have you any recollection when that *certiorari* was allowed? A. I cannot tell.

Q. By whom? A. That I cannot tell. That writ is on file in Mr. Johnson's office, unless he has returned it to the Supreme Court.

Q. You say that writ is now in the possession of Mr. Johnson, unless it has been returned? A. Yes, sir.

Q. He is the Clerk of the Special Sessions? A. Yes, sir.

Q. The law forbids his retaining it more than twenty days, does it not, until he makes his return? A. No; I think the law provides it shall be returned on a day certain—the first Monday of the General Term.

Q. Are you quite certain that that writ was delivered to him more than a month ago? A. I cannot state when. I know that I saw the writ in the Beaumont case, for I inquired if the writ had been served.

Q. Was that two months ago? A. I guess it was; yes, sir.

Q. And her conviction was August 17, 1871, wasn't it? A. That I cannot remember; I don't think she was brought down till November. I don't know.

Q. Look at the date (handing witness a paper). A. It is the 17th of August, 1871; that is the date of the conviction.

Q. The statute prescribes that the writ shall be applied for within ten days after the conviction, does it not? A. The statute of 1859; that is, to the General Sessions. The common law writ to the General Term, there is no limitation.

Q. What was your reason in gettting three successive writs, in Mrs. Beaumont's case, of Habeas Corpus? A. I presume they had been dismissed the other time, either from my absence or my partner's, I cannot tell. You will find very many instances in which writs are renewed. I had to renew two that were returnable this morning, whilst I was here.

Q. Were these dismissed upon hearing? A. No, sir; not upon hearing.

By Mr. FULLERTON:

Q. Whose handwriting is that? [handing witness a paper in the Beaumont case.] A. That is my handwriting.

Q. And the endorsement below that? A. My handwriting.

By Mr. STICKNEY:

Q. This is the second in the Adelaide Beaumont case? [handing witness a paper]. A. That reads "Write dismissed, and prisoner remanded." That is the jailor's endorsement. I don't spell writ that way.

A. Whose initials are those? A. G. G. B.—George B. Barnard.

Q. Those are Judge Barnard's initials? A. Yes, sir.

Q. Upon what ground did he remand her? A. I don't know. On account of my absence, I presume, that day, if you will look at the orthography of the word writ.

Q. As to the second writ there was no hearing, which resulted in her being remanded? A. Oh, not any.

Q. On the first writ that you got out there is endorsed— A. No Judge present.

Q. The date of your getting out the first writ was— A. August 17th.

Q. And the date of the discharge was the 6th of October? A. There were very many cases in which the District Attorney would oppose, and after adjournment would sign a consent—change his views.

Q. Do you remember any case during the year 1871, when the District Attorney signed consent for the discharge? A. When I say District Attorney, I mean—

Q. I mean any one in the office? A. I think there were very many.

Q. You don't remember any of them? A. I can't tell, sir.

Q. Did any one from the District Attorney's office, except Mr. Jerome, ever appear and consent to these discharges in 1871? A. No; Mr. Blunt appeared, and then, when he left, Mr. Jerome.

Q. Did any one else from the District Attorney's office, that you remember, ever consent to one of these discharges? A. Not to my recollection.

Q. Judge Garvin—did he ever? A. I don't know that he has. I cannot tell, he may have.

Q. Can you state any case when he ever did so? A. I cannot any particular case.

Q. Can you state any case where Mr. Sullivan ever did so? A. No, I cannot.

Q. Can you state any case when any one ever did it except Mr. Jerome or Mr. Blunt? A. Mr. Blunt appeared in many and Jerome followed him.

Q. Do you remember when Mr. Jerome went into the office; was it not in the year 1871? A. I think so; yes, sir.

Q. And in the year 1871, can you remember any one who consented to one of these except Mr. Jerome? A. I don't know; my impression is that sometimes we would ask Fellows or Sullivan.

Q. Can you rememember any one else but him? A. No, I cannot.

Q. Mr. Jerome is not living now? A. No.

Q. How did it happen that you only got discharges for prisoners under these circumstances, in three or four cases at the outside, during the last year, from other Judges than Judge Cardozo? A. Simply from the fact that Judge Cardozo was more accessible in that building.

By Mr. STRAHAN:

Q. Just here will you state why you applied to Mr. Cardozo in a majority of instances? A. Simply because he was there. We could calculate on finding him at 9 o'clock in the morning; then my writ would be served before the prison conveyance would be removed to prison.

By M. VEDDER:

Q. Did you have any reason other than you have stated, for bringing these before him? A. Not any.

By Mr. STICKNEY:

Q. There were Judges sitting at Chambers every month of the year, and nearly every day of the year, were there not? A. Yes, sir; I presume so.

Q. Did your petition for Habeas Corpus in any case recite that a writ of *certiorari* had been allowed, and that you wished the prisoners brought up to give bail? A. Yes, sir.

Q. In what one of those cases; can you remember any one case? A. No; the form would run as I have it in my book, written out for the clerk to copy.

Q. Can you remember any of these cases? A. I can not.

Q Have you not previously stated that these petitions for the writ of Habeas Corpus all followed this one form? A. They do in most instances. In some we use the form: Whereas a writ of *certiorari* has been duly allowed. That would be where a writ of *certiorari* had been allowed alone in the first instance.

Q. But you cannot name any case in which that was done? A. No, I cannot; you will find several on record there right in that bundle.

Q. I wish you would find one; I could not find one myself; I looked through them all; you don't remember one? A. No, sir.

Q. In the case of Wm. Beaumont, will you testify positively that there was any bail given on the discharge? A. I was not present when Mr. Beaumont was discharged.

Q. In the case of John H. Bridgewater— A. I don't remember that name at all; I never heard it.

Q. In the case of Albert Myers, will you testify that there was bail given? A. Yes, sir. Albert Myers' bail was given.

Q. You can testify to that positively, can you? A. Yes, sir; positively in the case of Albert Myers; I can give you the name of the surety.

Q. What was the name of the surety? A. Gerton.

Q. What was done with the bond? A. I presume it is in the District Attorney's office.

Q. Are they kept in the District Attorney's office? A. The Clerk's office of the Court of Sessions—the General Sessions, I am speaking of.

Q. In the case of Silas Gordon, will you testify positively that there was bail given? A. I can not.

Q. In the case of Adelaide Beaumont, will you testify positively that there was bail given? A. To the best of my impression; yes, sir.

Q. Positively? A. No, sir.

Q. In the case of Patrick McCowan, will you testify positively that there was bail given? A. I don't remember that case.

Q. In the case of Edward Haskins, will you testify that there was bail given? A. I don't remember.

Q. In the case of John McGinnis? A. Bail was not given in McGinnis' case; he was discharged on the ground that he was imprisoned after the sentence had expired.

Q. Does that appear on the record? A. Yes, sir. Who did you say, John or James.

Q. John McGinnis; can you testify positively that there was bail given there? A. I don't remember.

Q. Stephen H. Rownan? A. Yes, sir.

Q. There was bail given there? A. Yes, sir; and he was subsequently sent back. I argued that case before Recorder Hacket.

Q. Herman Ledendorf? A. I don't remember.

Q. Charles M. Barry? A. I don't remember.

Q. Moses Henry? A. I don't remember.

Q. John Frederick and Conrad Mahlig? A. I don't remember.

Q. Wm. Horan? A. I think there was not bail given there. I think that is the case Judge Clerke discharged.

Q. No, he was discharged by Judge Cardozo. Joseph A. Lowrey? A. I don't remember.

Q. Valentine Weissensee? A. That name I do not remember.

Q. Was there bail given there? A. I cannot tell. It was a long time since, wasn't it?

Q. It was last year. Lewis Livingston? A. No.

Q. Thomas Dempsey? A. I do not.

By Mr. FULLERTON:

Q. That is, you don't remember? A. I can't remember the names of the cases unless there is something more peculiar than the others. I remember the case of the prize fighters, and the Beaumont case, of course I would remember, from the fact of the obesity of the lady and the circumstances attending it.

Q. And you say you have no memorandum, or record, or register from which you can ascertain any of these points? A. I have a diary.

By Mr. FULLERTON:

Q. Why was bail taken of prisoners when they were discharged in consequence of the illegality of the Courts, on their own recognizance? A. The Attorney-General and others would seem to think it would exercise control over the prisoner if he should be caught tripping again.

Q. Are there not many cases of Habeas Corpus the records of which are not here? A. Yes, sir; plenty; there are plenty here that I have not seen.

Q. Some not here that you have seen heretofore that you know of? A. Yes, sir.

Q. Are not these records carelessly kept in the Clerk's office? A. Yes, sir; in very many cases we cannot find the petitions or anything else.

Q. Where you have used them? A. Where we have looked for them and could not find them—frequently, plenty of recognizances not to be found which have been filed.

Q. Some that you know were filed? A. Yes, sir.

Q. Was it not a fact sometimes that you or the District Attorney would go before the Judge who was disengaged, for a

writ of Habeas Corpus? A. Most frequently. To take a writ over with the prisoner before a Judge engaged listening to an argument at Chambers would necessitate the prisoner waiting down until after the Penitentiary boat had returned. Then he would have to order the prisoner to the Tombs that night. We would therefore go to any Judge whom we could find disengaged, with a view to economy of time.

By Mr. Stickney.

Q. What time does the boat, the first trip in the morning, get over regularly from Blackwell's Island? A. I don't know that. There is a boat at one, and one at three; I think, I am not positive.

Adjourned to March 6th, 1872, 1. P. M.

New York, March 6th, 1872.

Committee met at 1 P. M., pursuant to adjournment.

Dudley Field, recalled, testified:

At my previous examination I was asked to produce at another session, to the Committee, a complaint, in which an objection is made to an arbitration by the Stock or Gold Exchange; I now produce two such complaints. They were suits which I am familiar with, having taken part in the argument on the motion to discontinue the injunction. I had that argument and those suits in my mind when I testified previously; I produce these two. Secondly, I remember to have stated that it was my impression that Mr. Hamilton had been a client of mine prior to 1869; upon examination of my register, I am satisfied that he was not. We are friends, and meet occasionally, he living at Yonkers and I at Hastings, and we generally start upon the same train; but whether I knew him before 1869 or not, I am not sure; I think I did. I was also asked about Judge Bosworth's opinion, of which I had only an extract, but of which I now produce the original. I was also asked to point out how Judge Brady's injunction was stronger than the other; I produce it; it is absolute; while many of the others, and, as I then supposed, all, were accompanied by an order to show cause. I have copies of other injunctions in gold matters, furnished me by other lawyers, which I will produce if required.

Complaint in the case of Henry N. Smith and others against William H. Neilson, put in evidence, and marked A 2.

Summons and complaint in the case of Smith and others against Underhill and others, put in evidence, and marked B 2.

Injunction of Judge Brady, in the case of John W. Gillespie against W. H. Neilson and others, put in evidence by Judge Fullerton, marked C 2.

Letter from Judge Bosworth to David Dudley Field, dated January 26th, 1871, put in evidence by Judge Fullerton, and marked D 2.

By Mr. VAN COTT:

Q. Was the explanation, with which you preceded the production of the complaints which you refer to, reduced to writing? A. Yes, sir; part of it.

Q. I ask that you will hand that in to be marked. A. Certainly; with pleasure.

(Witness here handed the paper referred to, to the Chairman, saying: They wish me to produce my private memorandum as evidence; I have no objection; this is the memorandum from which I made the explanations; I read a part of it.)

By Mr. VAN COTT:

Q. Was the complaint in the case you produced, of Smith against Neilson, sworn to on or about the 24th of January, 1870? A. I do not know, sir.

Q. It purports to be, does it not? A. I shall not answer that question; you can tell what it purports to be as well as I can.

Mr. VAN COTT:

If the Committee please I read from the summons in the case, dated New York, January 24, 1870, and I read the jurat attached to the complaint, sworn 24th of January, 1870, Edward Ensign, Notary Public. Does the fourth subdivision of this complaint contain the averment that you refer to? A. Yes, one of the averments.

Q. Will you refer to the complaint in the case of Smith against Underhill, which you have produced, and state where the averment is to which you have referred? A. It is the fourth averment, sir, and the fifth.

Mr. VAN COTT:

The summons and the complaint of Smith against Underhill is the 28th of December, 1869, and the verification is on the 28th of December, 1869. Did you obtain injunctions upon any complaints containing substantially the same averments, before the 28th of December, 1869? A. My impression is that we did, though I doubt if the arbitration clause was brought in; the question of expulsion was.

Q. I mean the averment that you had objected to the arbitration. A. I think not; I am not sure.

Q. Are you not acquainted with Henry H. Martin, of the firm of Smith, Gould & Martin? A. Yes, sir.

Q. Also with James B. Bach, of that firm. A. Yes, sir.
Q. Also with Henry N. Smith? A. Yes, sir.
Q. And Jay Gould? A. Yes, sir.
Q. Are you acquainted with their handwritings? A. No sir; at least I am not an expert in handwriting; I have often seen Jay Gould's signature and would be willing to swear to an opinion about it, but as to the others I could not.
Q. Would you know their handwriting, probably, if you saw it? A. I have answered that, sir.
Q. Do you know the firm signature of Smith, Gould, Martin & Co.? A. No, sir. I have received checks from them, but I have never examined them sufficiently to be able to swear to their signature.

By Mr. NILES:

Q. Have you ever seen Mr. Smith writing? A. Yes, sir; often.
Q. Have you seen Mr. Bach write? A. No, not that I remember of.
Q. Have you seen Mr. Martin write? A. Yes, sir.
Q. Often? I think I have seen him write; I am not sure; I would swear to no man's signature that I am familiar with.

By Mr. VAN COTT:

Q. Did you intervene for Smith, Gould, Martin & Co. in any proceeding before the Arbitration Committee of the Gold Exchange before you commenced this suit in December, 1869, for them against Underhill and others? A. What do you mean by intervening?
Q. Did you prepare any papers, or appear before the Committee to oppose or to take part in any such arbitration? A. I did not appear before any Committee, and I do not remember preparing any papers to be presented to any Committee; it is possible that there was some remonstrance put in, but my memory is not clear upon that subject.
Q. I wish you would look at the signatures to the several papers now shown you, and say which of the signatures you do recognize, whether of parties deposing or of notaries—the first one is on the bottom of the first page? A. I do not know that signature, sir (after looking through the papers); the signature of Jay Gould, I have no doubt, is his genuine signature; it bears such a resemblance to his hand-writing I cannot doubt it; the other signatures I have no knowledge of.
Q. The signature of Mr. Martin you do not know? A. No, sir.
Q. Nor the signature of Mr. Bach? A. No, sir, nor of Mr. Smith, nor of the notaries.
Q. Do not you know Mortimer Smith's signiture? A. No, I do not; I have seen him writing a great many times, but I cannot form the slightest idea of how he does sign his name.

By Mr. VAN COTT:

We propose to read in evidence these papers that I have just shown the witness.

By Mr. NILES:

Q. Do you know the handwriting of the body of these papers? A. No, sir.

By Mr. VAN COTT:

Q. Mr. Shearman, of your firm. testified that he thought you procured the injunction in the case of Lloyd & Hamilton *vs.* The Gold Exchange Bank, and in the case of Carver *vs.* The Gold Exchange Bank. Did you procure the injunction in those cases? A. I do not now remember; if I had had my attention called to it I could have ascertained.

Q. And also the order for the Receivership? A. Receivership of what?

Q. The Gold Exchange Bank? A. I have no recollection of it; it is not impossible that I did; my impression was that the first Receivership was obtained by Mr. Vanderpoel, in my absence.

Q. That was not in this suit? A. Well, whether I got a subsequent one or not, I really do not remember.

Q. If you got those orders, do you know where you got them? A. No, sir.

Q. Nor of whom you got them? A. No, sir.

By MR. NILES:

Q. Mr. Field, will you look at those papers which have been referred to, and see if any part of the writing is by any one in your office? A. I think not; none that I recognize; I have a number of clerks, and I might make a mistake, but none that I recognize; but I am not a judge of handwriting.

Q. Do you know S. R. Johnson? A. No, sir, not that I am aware of.

Q. I understand you that Mortimer Smith, Notary Public, was an employee of that railroad office? A. I did not state it, but that is the fact.

Q. Was at that time, was he? A. He has been there ever since I can remember.

Q. Was he in 1869? A. I have no doubt he was.

Q. Do you know his handwriting? A. I de not know it enough to swear to it.

By MR. VAN COTT:

Q. Didn't you say you did not recognize the handwriting of these papers? A. Not at all, sir. I have not the remotest idea of the handwriting.

Q. Well, do you recognize the handwriting of the paper now shown you? A. Yes, sir.

Q. Whose is it? A. A man named Malloy, who was a clerk of mine, a former clerk of Barretts & Redfield.

Q. Are those papers also in his handwriting? A. Yes, sir.

By Mr. Prince:

Q. Do you know the signature of Mr. Osborne? A. No, sir.

Injunction ordered in the case of Scott and others *vs.* Neilson and others, put in evidence by Mr. Van Cott, and marked E. 2.

Mr. Van Cott also read another paper as follows:

"Office of Smith, Gould, Martin & Co.,
N. Y., Dec. 1869.

To John B. Hodgkin, Esq., *Chairman of the Arbitration Com. of the N. Y. Gold Exchange*:

Dear Sir: Herewith please find the answer in the accompanying affidavits of all members of our firm to the complaint of John Bonner & Company, pending before your committee for the alleged sale of $50,000 gold. We submit that Messrs. Bonner & Company have lost their right to arbitrate their claim before your committee by their *laches*. But this we waive, and willingly submit the matter to your honorable body for adjudication, relying on the justice of our position, and with your arbitrament we shall be content."

Very respectfully,
Smith, Gould, Martin & Co.

In pencil at the foot of the page, "turn over". Then over the page "Mr. H. H. Martin is sick, and not down to business to-day; will probably be on to-morrow. We respectfully ask "that this case be adjourned until then, to permit his affidavit "to be properly signed. S., G., M. & Co."

Attached to that paper is what purports to be an affidavit made by Henry H. Martin: an affidavit made by James B. Bach: an affidavit made by Jay Gould, whose signature has just been attested by Mr. Field; an affidavit by Henry N. Smith; and an affidavit by William A. Timson. The affidavit of Henry H. Martin purports to have been sworn on the 17th of December, 1869, while each of the other affidavits are sworn on the 16th of December.

Mr. Parsons:

I desire now to produce from the County Clerk's office the original of the affidavits, drafts of which were furnished by Mr. William Tracy on his examination. First, the affidavit of John Roberton, sworn October 22nd 1869, before David W. Price, Notary Public, in the suit of Mooney *vs.* The British Commercial Life Insurance Co. and others used in opposing the motion to

continue the Receivership, filed Oct. 26th 1869 (marked Specification 9, Exhibit Q).

Also the affidavit of John Roberton, in the same suit, verified November 8th, 1869, before J. F. Valentine, Notary Public, and used upon the motion to vacate the stay of proceedings upon appeal in that suit (marked specification 9, Exhibit R).

By Judge FULLERTON:

I desire to put in evidence the final decree in the case of George Mooney and wife *vs.* The British Commercial Life Insurance, filed May 25th 1870; entered by consent; William D. Booth, Attorney for Plaintiff, Tracy, Talmage & Lee, attorneys for the defendants the Insurance Company; W. J. Kane, attorney of John Dwyer; H. Bevering, attorney for Maria Barbara Valentine (marked Specification 9, Exhibit S).

Also the opinion of Judge Cardozo on the motion to vacate the stay of proceedings in that case, which reads as follows:

"The danger of the insolvency of the Company, if not its actual insolvency (although I think the latter clearly established) is so manifest, that it would be monstrous to jeopardize the funds in our jurisdiction insufficient to ensure policy holders, by the delay which this stay will accomplish. The justness of the application of the fund, as directed, is so plain that it could not be doubted, and no one is harmed by it. The practice of applying *ex parte* to a Judge who has not heard the argument to stay proceedings upon the order made by a Judge who has carefully considered the whole subject is not to be commended. The stay is vacated. A. C."

Judge Fullerton put in evidence, opinion of Judge Cardozo in the case of Bowne against Leveridge, vacating the Receivership, marked Specification 10, H.

Mr. PARSONS:

We desire to put in the writs of Habeas Corpus, with the discharges of the prisoners committed at the Special Sessions, for the year 1870, the writs for which year were not read by Judge Fullerton yesterday. We don't desire, of course, to put in the papers themselves, but the same statement from them as has been taken from the other writs. They are as follows:

No. 1. William H. Smith; endorsed, "the District Attorney having consented, the within named William H. Smith is discharged on bail, January 5th, 1870. A. C., J. S. C." Date of commitment, December 23rd, 1869. Offence, petit larceny; sentence six months; attorneys, Howe & Hummel; Justices Dowling & Shandley.

No. 2. Daniel Brauniff; endorsed, "the District Attorney having consented that the within named Daniel Brauniff is hereby discharged on bail, January 10th, 1870; A. C., J. S. C. Com-

mitment, dated January 4th, 1870. Crime, petit larceny; sentence, four months and $50. Attorneys, Howe & Hummel; Judges, Dowling and Bixby.

No. 3. Lewis Curtis; endorsed, "Term of prisoner's imprisonment having legally expired, he is hereby discharged, January 19th, 1870. A. C., J. S. C." Date of commitment——1870. Offence, assault and battery; sentence, $25 and one month. Justices, Dowling and Bixby; attorneys, Howe & Hummel.

No. 5. Thomas Noble, endorsed, "The within named Thomas Noble is hereby discharged on bail, the District Attorney having consented; January 27th, 1870; A. C., J. S. C." Date of commitment, November 30th, 1869. Crime, assault and battery; sentence, six months. Justices, Dowling and Kelly; attorneys, Howe & Hummel.

No. 6. James Dougherty; writ allowed, January 26th, 1870, by J. H. McCunn; Justice Superior Court; endorsed, "Prisoner discharged; J. H. Mc C."; attorney, Thomas H. Hurley.

No. 7. Sarah Young; endorsed, "the District Attorney having consented, the within named Sarah Young is hereby discharged on bail," January 29th, 1870. Crime, petit larceny; sentence, two months. Attorney, William S. Gover; Justices, Dowling and Bixby.

No. 8. Ann McCormack; endorsed, "Writ dismissed and prisoner remanded, February 9th, 1870. A. C., J. S. C." Offence, petit larceny; sentence, three months. Attorneys, Howe & Hummel; Justices, Dowling and Bixby.

No. 9. Lucy Smith; endorsed, "Writ dismissed, prisoner remanded; George G. Barnard."

Nos. 10 and 11. Francis Mallow and James Fitzpatrick; endorsed, "Writ dismissed and prisoner remanded; D. P. Ingraham, Justice."

No. 12. Charles Diamond; endorsed, "Prisoner remanded and writ dismissed; D. P. Ingraham, Justice."

No. 13. Luke Tierney; endorsed, "The within case having been duly removed by *certiorari*, the prisoner is discharged on his own recognizance, pending the decision on appeal, February 23d, 1870. A. C., J. S. C." Offence, assault and battery; sentence, four months. Attorneys, Howe & Hummel; Justices, Dowling and Bixby.

No. 14. James McLoughlen and Robert J. Johnson; endorsed, "Writ dismissed and prisoner remanded, February 25th, 1870."

No. 15. Sigfried Gutherwarkie; endorsed, "The within-named Sigfried Gutherwarkie is discharged on his own recognizance, March 1, 1870. A. C. J. S. C." Crime, petit larceny; sentence, 3 months and $50. Attorneys, Howe & Hummel; Justices, Dowling and Bixby.

No. 16. Francis Mallon; writ allowed by Justice McCunn; endorsed, "Prisoner discharged; see opinion with clerk. J. H. McC., Justice Superior Court."

No. 17. John Fitzpatrick and Francis Mallon; writ allowed by Judge McCunn; endorsed, "Prisoner discharged; see opinion with clerk. J. H. McCunn, Justice Superior Court."

No. 18. Charles Diamond; endorsed, "The within-named Charles Diamond is hereby discharged on bail, the District Attorney having consented, March 9, 1870." Commitment dated February 5th, 1870. Crime, assault and battery; sentence, 3 months and $50. Justices Dowling and Bixby; attorneys, Howe & Hummel.

No. 19. John Klein; endorsed, "Writ dismissed, prisoner remanded, March 21st, 1870. D. P. Ingraham, P. J."

No. 20. Dennis Brady; endorsed, "I consent that bail in the sum of $500 be taken in the within case to answer appeal to General Term. J. R. Fellowes, Assistant District Attorney." Endorsed, "The District Attorney, having consented as above, the within-named Dennis Brady is discharged on bail. March 22d, 1870. A. C. J. S. C. Commitment dated February 8th, 1870. Crime, assault and battery. Sentence, 6 months. Justices, Dowling and Bixby. Attorneys, Howe & Hummel.

No. 21. Mary Ann Taylor; endorsed, "Writ dismissed; prisoner discharged; May 10th, 1870. A. C., J. S. C.

No. 22. Hugh McAree; endorsed, "Prisoner discharged on bail by consent of District Attorney. A. C., J. S. C.;" date of commitment April 2, 1870. Crime, assault and battery; sentence, 4 months. Judges, Ledwith, Dowling and Bixby; attorney, James D. McClellan.

No. 23. William Daly; endorsed "Writ dismissed; prisoner remanded, May 11th, 1870. A. C., J. S. C.;" date of commitment April 30th, 1870; crime, assault and battery; sentence, 2 months. Attorney, E. J. Anderson; Justices, Ledwith, Dowling and Bixby.

No. 24. Jacob Goodenow; endorsed, "Writ dismissed; prisoner remanded. Commitment dated May 7, 1870; crime, embezzlement; sentence, 3 months; Justices, Dowling and Shandley; Attorney, John Brady.

No. 25. Willliam Daly; endorsed, "Writ dismissed; prisoner remanded; May 16th, 1870; date of commitment April 30th, 1870; Justices Ledwith, Dowling and Bixby; crime, assault and battery; sentence, 2 months; Attorney, Edward J. Anderson.

No. 26. Henry J. Allen; endorsed, "Discharged May 28, 1870. A. C., J. S. C." Date of commitment, May 14, 1870; Justices, Dowling and Shandley; crime, petit larceny; sentence, 6 months; attorneys, Howe & Hummel.

No. 27. John Raff; endorsed, "Prisoner discharged. A. C., J. S. C." Date of commitment, March 26, 1870; Justices, Ledwith, McQuade, and Scott; crime, assault and battery; sentence, 6 months; attorneys, Howe & Hummel.

No. 28. James Hughes; endorsed, ""The within-named prisoner, James Hughes, having been bailed, he may be dis-

charged. July 1, 1870. George G. Barnard." Date of commitment, June 21, 1870; Justice, Dowling; crime, assault and battery; sentence, 3 months and $50; attorney, Charles S. Spencer.

Nos. 29 and 30. James McGowan and Bartholomew Gegan; endorsed, "Writ dismissed and prisoners remanded. July 18, 1870. John R. Brady, Justice." Date of commitment, June 3, 1870; Justice, Dowling; crime, violation of Quarantine laws; sentence, 3 months; attorneys, Howe & Hummel.

No. 31. William French; endorsed, "Writ dismissed and prisoner remanded. September 5, 1870. D. P. Ingraham, Justice Supreme Court." Date of commitment, June 9, 1870; Justices, Dowling and Shandley; crime, assault and battery; sentence, 3 months; attorneys, Howe & Hummel.

No. 32. Frederick Petrie; endorsed, "Taken before Judge G. G Barnard and remanded, and neglected to be endorsed by him, August 12, 1875;" no signature.

No. 33. John Van Asfern; endorsed, "Writ dismissed; prisoner remanded. October 17, 1870. A. C., J. S. C." Date of commitment, August 4, 1870; Justice, Shandley; crime, petit larceny; sentence, 6 months and $50; attorneys, Howe & Hummel.

No. 34. Patrick H. Clare; endorsed, "The District Attorney having consented, the within-named Patrick Clare is hereby discharged on bail. A. C., J. S. C. August 22, 1870." Date of commitment, August 4, 1870; Justice, Shandley; crime, assault and battery; sentence, 2 months; attorneys, Howe & Hummel.

No. 35. Arthur Higgins; endorsed, "The District Attorney having consented, the within-named prisoner is hereby discharged on bail. August 29, 1870. George G. Barnard, Justice Supreme Court." Date of commitment, June 23, 1870; Justice, Dowling; crime, assault and battery; sentence, 4 months; attorneys, Howe & Hummel.

No. 36. Edward Mullholland; endorsed, "Writ dismissed; prisoner remanded. September 26, 1870. Charles P. Daly, C. J." Commitment missing.

No. 37. Charles McLaughlin; endorsed, "Prisoner remanded and writ discharged. D. P. Ingraham, P. J." Commitment missing.

No. 38. Frederick Brookman; endorsed, "Writ dismissed by consent. October 17, 1870. A. C., J. S. C." Justice, Dowling; date of commitment, September 17, 1870; crime, assault and battery; sentence, 1 month; attorneys, Howe & Hummel.

No. 39. John B. Carlisle; endorsed, "District Attorney not opposing, the within-named prisoner is discharged on his own recognizance. October 4, 1870. A. C., J. S. C." Date of commitment, September 10, 1870; Justices, Dowling and Shandley.

crime, indecent assault; sentence, 6 months; attorneys, Howe & Hummel.

No. 40. John Graham; endorsed, "Prisoner discharged on his own recognizance, on appeal to General Sessions. October 11, 1870. A. C., J. S. C." Date of commitment, July 23, 1870; Justice, Dowling; crime, petit larceny; sentence, 6 months; attorneys, Howe & Hummel.

No. 41. David Bland; endorsed, "Prisoner released on his own recognizance. October 14, 1870." In the handwriting of J. R. Fellowes, Assistant District Attorney. Date of commitment, September 3, 1870; Justices, Dowling and Shandley; crime, petit larceny; sentence, 6 months; attorneys, Howe & Hummel.

No. 42. Charles McLaughlin; endorsed, "Discharged on the application of his mother, and the commitment being defective. George G. Barnard, J. S. C." All in the handwriting of Judge Barnard; date of commitment, July 14th, 1870; Justices, Dowling and Shandley; crime, assault and battery; sentence, 6 months; attorneys, Howe & Hummel.

No. 43. Henry Otto; endorsed, "Writ dismissed and prisoner remanded; October 11th, 1870; J. R. Brady." All in the handwriting of Judge Brady. Date of commitment, September 20th, 1870; Justice, Dowling; crime, petit larceny; sentence, 4 months and $50; attorney, W. J. Kane.

No. 44. Edward Mulholland; endorsed, Prisoner discharged on his own recognizance; A. C., J. S. C. All in the handwriting of Judge Cardozo. Date of commitment, August 18th, 1870; Justice Dowling; crime, indecent assault; sentence, 6 months and $50; attorneys, Howe & Hummel.

No. 45. George Taylor; endorsed, "Prisoner discharged on his own recognizance, October 31st, 1870; A. C., J. S. C." All in the handwriting of Judge Cardozo. Date of commitment, September 29th, 1870; Justices, Dowling and Shandley; crime, petit larceny; conviction on his own confession; sentence, 4 months.

No. 46. Lizzie Stewart; endorsed, "Writ dismissed November 5th, 1870; S. Jones, Judge." Also in the handwriting of Judge Garvin, "I oppose the discharge of the prisoner S. B. Garvin." Date of commitment, September 24th, 1870; Justices, Dowling and Shandley; crime, assault and battery; sentence, 6 months; attorney, John C. Lang.

No. 47. Christopher Bray; endorsed, "Prisoner discharged on his own recognizance. A. C., J. S. C." All in the handwriting of Judge Cardozo. Date of commitment, October 25th, 1870; Justice, Dowling; crime, assault and battery; sentence, 6 months; attorneys, Howe & Hummel.

No. 48. Daniel Sullivan; endorsed, "I oppose this application for the prisoner's discharge, and do not, and will not consent to the discharge; S. B. Garvin, District Attorney;" all in

Judge Garvin's handwriting. Endorsed still further, "Prisoner discharged upon his own recognizance, October 29th, 1870; A. C., J. S. C."; all in the handwriting of Judge Cardozo. Date of commitment, September 27th, 1870. Justice, Dowling; crime, assault and battery; sentence, 4 months; attorneys, Howe & Hummel.

No. 49. Peter Parrott; endorsed in lead pencil in the handwriting of Judge Garvin, "I consent to discharge on bail; S. B. G." In Judge Cardozo's handwriting, "Prisoner discharged on his own recognizance; A. C., J. S. C." Date of commitment, Nov. 1st, 1870. Justices, Dowling and Shandley; crime, assault and battery; sentence, one month; attorneys, Howe & Hummel.

No. 50. Mark Manlock; endorsed, adjourned to 21st of November, 1870, at 11 A. M., and, in meantime, the prisoner remanded: "I oppose the prisoner's discharge at any time. S. B. G;" in Judge Garvin's handwriting; then in Judge Cardozo's handwriting, "Prisoner discharged on his own recognizance, Nov. 21st, 1870. A. C., J. S. C." Date of commitment, Oct. 27th, 1870; Justice, Dowling; crime, petit larceny; sentence, six months and $50; attorneys, Howe & Hummel.

No. 51. Michael Donohue; endorsed by Judge Cardozo in his own handwriting, "Writ dismissed, and prisoner remanded. A. C., J. S. C." Date of commitment, Oct. 23d, 1870; Justice, Dowling; crime, assault and battery; sentence, six months; attorney, J. G. Boyd.

No. 52. Aaron H. Fowler; endorsed, "I hereby consent that the within writ be dismissed, and the prisoner discharged; S. B. Garvin, per R. H. Jerome;" in the handwriting of Mr. Jerome. Then in the handwriting of Judge Cardozo, "Prisoner discharged on his own recognizance. A. C., J. S. C." Date of commitment, Oct. 20th, 1870; Justices, Dowling and Shandley; crime, assault; sentence, six months; attorneys, Howe & Hummel.

No. 53. Richard Cuff; endorsed, "I oppose the discharge; the prisoner is a bad fellow;" in Judge Garvin's handwriting. Then in Judge Cardozo's handwriting, "Prisoner discharged, having given bail, to appear, in $100. A. C., J. S. C." Date of commitment, Nov. 22d, 1870; Justice, Dowling; crime, assault and battery; sentence, two months; attorneys, Howe & Hummel.

No. 54. James Rooney; endorsed, "Prisoner discharged, and bail taken in the sum of $500 by the District Attorney. December 2d, 1870. George G. Barnard, J. S. C." All in Judge Barnard's handwriting. Date of commitment, Nov. 19th, 1870; Justice; Dowling; crime, dangerous weapons; sentence, six months; attorney, Charles S. Spencer.

No. 55. Thomas Baker; endorsed in Judge Cardozo's handwriting, "Writ allowed, and prisoner discharged. A. C., J. S.

C." Date of comitment, Nov. 26th, 1870; Justice, Shandley; crime, attempt at petit larceny; sentence, three months; attorneys, Howe & Hummel.

No. 56. Michael Carr; endorsed in Judge Cardozo's handwriting, "Prisoner discharged on his own recognizance. Dec. 23d, 1870. A. C., J. S. C." Date of commitment, Dec. 10th, 1870: Justice, Dowling; crime, petit larceny; sentence, six months; attorneys, Howe & Hummel.

No. 57. Thomas Darcy; endorsed, "Prisoner discharged. January 10th, 1871. A. C., J. S. C." Date of commitment. July 19th, 1870; Justices, Dowling and Shandley; crime, petit larceny, convicted on his own confession; sentence, five months; attorney, William F. Hintzing.

Nos. 58 and 59. William H. Jackson and William Hammond; endorsed in Judge Cardozo's handwriting, "Prisoners discharged on their own recognizance; date of commitment, December 8th, 1870; Justice, Dowling; crime, petit larceny; sentence, six months; Howe & Hummel."

No. 60. Francis Quiller; endorsed in Judge Cardozo's handwriting, "Prisoner discharged on his own recognizance; December 29th, 1870; A. C., J. S. C.; date of commitment, December 15th, 1870; Justices. Dowling and Shandley; crime, petit larceny; convicted on his own confession; sentence, one month; attorneys, Howe & Hummel."

No. 61. Lewis Livingston; endorsed in Judge Cardozo's handwriting, "Prisoner discharged; A. C., J. S. C.; date of commitment, December 8th, 1870." Justice, Dowling; crime, assault and battery; Howe & Hummel.

Those are all for the year 1870.

Mr. NILES:

I will read some portions of the writ No. 39, in 1870, the case of John Carlisle, tried before Justices Dowling and Shandley, for indecent assault and battery on a woman: sentence six months, September 10th, 1870. On the writ is endorsed: "I hereby al- "low the within writ. October 3d, 1870. Albert Cardozo, Jus- "tice of the Supreme Court."

The writ was originally, as I understand it, made returnable October 3d, and afterwards it was changed to the 4th. Then it is endorsed, "Consent that the prisoner be discharged on his "own recognizance, October 3d, 1870. Assistant District Attor- "ney." The whole of that endorsement is erased, and it is endorsed, "October 4th, notice waived J. R. Fellows, Assistant "District Attorney," in pencil. Then it is endorsed, "The Dis- "trict Attorney not opposing, the within named prisoner is dis- "charged on his own recognizance. October 4th, 1870. A. C., "J. S. C." The words "District Attorney not opposing, the "within named prisoner is discharged, October 4th, 1870," is in one handwriting and one ink. The words "On his own recog-

"nizance" are in another handwriting and a different ink. And the "A. C." is in Justice Cardozo's handwriting.

W. J. CARLISLE, called by the Committee; examined by Mr. NILES:

A. Are you the father of the John B. Carlisle named in this writ, No. 39? A. I am the father of James B. Carlisle. I would state that it is not at my own instance I appear. I would rather not appear as a witness at any time, but I come here at the instance of Mr. Hall, of the firm of Benedict, Hall & Co., for whom I do business.

Q. Was a subpœna served upon you to come here? A. No, sir.

Q. What have you to say with regard to this proceeding of the conviction, to the final discharge of your son? Do you know such a person?

(Objected to.)

By Mr. STRAHAN:

Q. Do you know such a person as John B. Carlisle? A. No, sir; my son's name is James B. Carlisle.

Q. What was your son arrested for? A. My son was arrested for the charge that you have stated?

Q. At what time was he arrested? A. In the latter part of August or early in September.

Q. What have you to say in reference to this matter? A. I can only state the case as far as I know my connection with my son's case. My son was arrested and sent a prisoner to the Tombs, and I had him out on bail for his appearance in Court at a time mentioned; I was recommended to go to Mr. Howe as a good criminal lawyer, and employed him in the case; I went to his office; I did not see Mr. Howe, there but I saw Hummel—I believe that was the name—he appeared to be the active managing partner; I made known my case to him, and, after examining into it and questioning my son, he said——

Mr. FULLERTON objects to the witness giving the statements of other parties.

After some discussion by the members of the Committeee, Mr. Prince stated that they would hear what the witness had to say and then decide whether they would keep it on the minutes.

WITNESS.—I was going to state that Mr. Hummel said he thought he could clear him for $300; that it would require that. I told him that I was not able to pay so much, and I was hardly willing to pay that, I would rather have him come to trial and take his chances; I was not able to pay it. On the day of trial he said he would appear for $25; I paid him the $25. I had brought a witness to prove the good character of my boy—a wit- that was known to the Court—and I thought he would be of

some service; but Mr. Hummel thought it best not to introduce the witness at all and to make no defense; he said it would make the case worse, and he did not introduce my witness nor make any defence, and the Judge proceeded to pass the extremity of the law—I think six months imprisonment on the Island; the attorney then told me he could get him clear yet for the amount he first named.

Q. Who was he tried before? A. Judge Dowling. I finally negotiated with a lawyer to get him clear for $200; that was all the money I had to my credit at that time; I am no lawyer, but my recollection is that he said something of a writ of Habea Corpus. When they made the paper out, he said they would have to delay a few days, as he wanted the papers to go before a particular Judge; that he could not be had just then; I went over two or three days to him, for I wanted to get my son out: I think it was a week or two, or three weeks; he told me he had all the papers fixed and he would have my son released and I was to give the man $5 that would bring him over to the store; in a few days my son came with the man and I paid him the $5. That is all I know in connection with the case.

Q. Was he discharged at your store? A. He came in company with a person to the store, and he left him with me at the store and I sent him home; he was in bad health at the time.

Q. Who told you that he would have to wait to get it before a particular judge? A. Mr. Hummel.

Q. Did he say what Judge? A. A particular Judge that he wanted it to go before, and that he could not be come at just then, that he was out of town, or something; I know the case was delayed on that account.

Q. Did he name the Judge? A. I cannot answer positively as to that, but it seems to me that it was Judge Cardozo; I would not be positive.

Q. Did he say why he wanted it to go before a particular Judge? A. No.

Q. Did he give you any reason whatever for his wanting to go before a particular Judge? A. I cannot say that he did.

Q. What was your boy's business? A. A salesman, he was at that time.

Q. How old a person was he? A. Some 20 years of age.

Q. When was he arrested? A. In the latter part of August, or the early part of September, 1870.

By MR. TILDEN:

Q. He is 20 years old now? A. Yes sir.

Q. Then he was about 18 or 19 years old then. Give us the conversation that occurred at the time when you say that your counsel told you that he wanted this case to go before some particular Judge—as near as you can remember it? A. My recollection is that it was at the office, when I went there to hurry the

papers through and get my boy out; I asked his reason why it could not be done, and he said that the papers would have to go before a certain Judge, who could not then be seen; I did not know for what cause, whether to appear in Court or not, that the papers would have to appear before him.

Q. Did he say what Court he would have to go before, if you recollect? A. No, sir, I am not sufficiently familiar with the Courts to recollect.

Q. Was it at that time that he mentioned the name of some particular Judge? A. I said that I could not say for certain that he mentioned the name of any Judge.

Q. At the time that you say, you had the impression that he mentioned some particular judge, and that his name was Cardoza? A. By some means or other I have got that name on my mind; but I do not know whether it came by his mentioning it or not; it seems to me that was the Judge; my recollection is not distinct enough to state positively.

Q. Did Mr. Hummel tell you to bring a witness as to your son's character? A. I cannot tell whether he did or not; I told him what I could do, and my recollection is that he said it would be well enough. But there was no defence put in.

Q. When did Mr. Hummel state that he would get him out for the sum that you first mentioned? A. It was previous to his conviction.

Q. I mean after he received the sentence of the Court, when he stated he could get him out now for the sum mentioned? A. He said he thought he could get him out.

Q. When was that? A. The same day after the sentence in Court.

Q. How many Judges were siting at this Court? A. One Judge.

Q. Who was that? A. Judge Dowling.

By Mr. FULLERTON:

Q. Have you any recollection that Mr. Hummel mentioned Judge Cardozo's name, or have you got that name on your mind, by hearing that he was on trial? A. I cannot say as to that; I have got his name on my mind some way or other.

Q. Benedict & Hall told you that Judge Cardozo was on trial. A. I do not think they told me that he was on trial, but that this Committee were investigating the acts of Judge Cardozo?

Q. May not that be the way in which you got the name on your mind? Yes, it may be.

Q. You are not satisfied in your own mind that you heard Hummel mention his name at all? A. No, I cannot say as to what Judge it was.

Mr. PARSONS:

The testimony of this witness and his son bears upon a charge which is embraced in the papers that we place before the Com-

mittee, and we desire that the son may be examined by our Committee.

Mr. NILES:

Of course it bears upon the charge.

Mr. PARSONS:

One charge is that these discharges were obtained corruptly; Howe & Hummel are implicated with the Judge who granted the discharge.

JAMES B. CARLISLE called by the Committee, sworn; examined by Mr. PRINCE:

Q. Are you the son of W. J. Carlisle? A. Yes, sir.

Q. Were you arrested in the year 1870? A. I was.

Q. About what time in the Fall of that year? A. About the 4th of September.

Q. Do you recollect the name you gave when you were arrested? A. I gave my right name; but I saw by the papers that it was put down as John B. Carlisle.

By Mr. PARSONS:

Q. Was the woman upon whom it was charged you committed the assault Charlotte Cranwell? A. I do not know her name.

Q. Do you remember her name in connection with that proceeding. A. I do not remember now the name.

Q. Were you arrested upon some charge? A. Yes, sir.

Q. Locked up in the Tombs? A. Yes, sir.

Q. Did the case not subsequently come on to trial in the Court of Special Sessions against you? A. Yes, sir; I was tried before Judge Dowling.

Q. Had you seen either of the firm of Howe & Hummel prior to your trial? A. Yes, sir; I was bailed three days and went to see them with my father, to get them as my lawyers.

Q. Were you present at any interview between either member of the firm and your father when anything was said in reference to witnesses being examined in your behalf on the trial. A. I went into the office with my father and they went into another office adjoining; I was there part of the time, and part of the time they were there by themselves.

Q. Did you hear the conversation between either of the attorneys and your father? A. What, particularly, do you mean?

Q. The question as to their procuring your discharge, or a conversation upon the subject of witnesses being examined in your behalf on the trial. A. It is so long ago that I do not remember; I cannot say much about it; I do not think I was; I cannot tell positively, it is so long ago.

Q. State the transaction as far as you do remember it. A. It was, I think, on Sunday night; I was under the influence of

lager beer; I got in with this woman, and she had me arrested; I was carried to the police station, and the next morning I was carried to the Tombs, and I got bail and we went to Mr. Hummel and he had it postponed for, I think, two or three days, when the trial came off, to get witnesses; I did not have any witnesses, only to swear to my character; then I was sentenced to six months on the Island, and I went over there, and was there a week or two when the warden told me that I was to go over to New York, and I went over with the assistant warden; I think it was to the District Attorney's office that I went.

Q. Do you know the name of the officer that took you to the District Attorney's office—was it Raywood? A. I cannot exactly remember his name; Mr. Fitch was the head warden and this was the assistant under him; he was in the Penitentiary generally; I went in and stayed in the office about half an hour, and Mr. Hummell told me to go over to my father with this man and give him $5 and it would be all right.

Q. Did you go to your father? A. I did; that is about all I know about the proceeding; my father attended to that part of the business.

Q. Who was the man to whom you gave the $5? A. The man that brought me over from the Island to New York; he told me he always charged $5 for bringing a prisoner over on a writ of Habeas Corpus.

Q. Did you see any paper on the occasion of your coming to the District Attorney's office? A. No, sir.

Q. Did you go to any other place than the District Attorney's office between the time of your coming from the Island and going to your father's store? A. Yes, sir; we went and sat down in a lrger beer saloon and read the paper before the District Attorney's office was open.

Q. From there did you go to the District Attorney's office? A. Yes, sir.

Q. Did you go to any Court-room? A. No, sir.

Q. Did you see any Judge? A. No, sir; I might have seen one, but not one to speak to.

Q. The only office in the Park to which you went was the office of the District Attorney? A. Yes, sir.

Q. Did you go to any other office or room in that building in which the District Attorney's office is, or in any building in the Park. A. No; I only went into one office.

Q. Was Mr. Hummel or Mr. Howe there? A. I did not see Mr. Howe; Mr. Hummel was walking round very busy; I saw him myself go in and out of the office two or three times.

Q. How long was he absent when he passed out before he returned again? A. I remember seeing him there; that is about all I can remember now.

Q. Do you know whether he went to any Court room? A. No, sir.

Q. What time was it when you went to your father's store? A. I got there, I think, about 11 or 12 o'clock somewhere, I cannot state the exact hour; this man went over there with me to 279 Broadway.

Q. How long did you remain in the District Attorney's office? A. I suppose I was there two or three hours.

Q. Waiting in his office? A. Yes, sir.

Q. Do you know Judge Cardozo? A. No, sir.

Q. Look at Judge Cardozo, sitting at the table, and state whether you were taken before him. A. I do not remember ever having seen him before.

Q. Were you taken before any Judge on that occasion? A. I was only taken to the District Attorney's office.

Q. That is the only place to which you went? A. Yes sir.

Q. How old are you? A. 22 years old.

By Mr. FULLERTON:

Q. This man that brought you from the Island, had he a writ of Habeas Corpus? A. Yes, sir.

Q. Did you see the writ? A. No, sir.

Q. Did you see any paper? A. He did not show any to me.

Q. Did you see any? A. I do not know whether I saw a paper or not; I certainly did not read any paper; I might have seen something in his hand.

Q. What time did you come over in the morning? A. I do not remember the exact hour.

Q. About what time? A. I suppose I came over about 9 o'clock.

Q. And you stayed about three hours in the District Attorney's office? A. I think so.

Q. Then you did not get to your father's store until after 12. A. It was about that time; I cannot exactly give the hour.

Q. If you came over at 9 and stayed three hours, you did not get to your father's until about 12? A. That was about the hour.

Q. What did you stay in the District Attorney's office 3 hours for? A. I do not say that it was 3 hours.

Q. Well, about three hours? A. I do not know, sir.

Q. Where was the District Attorney's office? A. I was never in the City Hall before; that was the first time I was there in my life.

Q. How large a place was it? A. There were three partitions, or three separate offices; I was in there as you go in from the door, and sat on a sofa.

Q. You were sitting on a sofa? A. A sofa or a chair.

Q. Were there many people in there? A. I do not think that there was half a dozen at a time. They were coming in any going out all the time.

Q. Did this person that brought you over, whoever he was,

have any conversation with the District Attorney? A. I do not remember of his having; I cannot positively say that he did or did not.

Q. Did you see the person who was called the District Attorney? A. Yes, sir.

Q. Where did you see him? Was it in the room where you were? A. Yes, sir.

Q. Did you see him conversing with Mr. Hummel? A. He might have said a word or two; not any lengthy conversation; I do not recollect.

Q. Did he have any conversation? A. I do not remember.

Q. Who notified Mr. Hummel, or how did he come to the District Attorney's office? A. I do not know.

Q. Did you stop at Hummel's office on your way over? A. No, sir.

Q. Was he at the District Attorney's office as long as you were? A. No, sir, not so long; he went out and in.

Q. Did not the party who brought you over leave you there and go out with Mr. Hummel? A. I cannot say that; he might have done it; but my knowledge is that he was in all the time nearly; they were talking together, and he was talking to some friends there; I cannot say that he went out.

Q. Can you say that he did not go out? A. No; it is so long ago I cannot say.

Q. You cannot say but that he was out, and was gone ten or fifteen minutes? A. No, sir.

Q. The Assistant District Attorney went out; he did not stay in the room all the time that you were there? A. I do not think he went out when I was there.

Q. Did you not say that the District Attorney went in and out? A. No, sir.

Q. Do you mean to have the Committee understand that during the three hours you were there, the person that was called the District Attorney was there all the time? A. To my knowledge he was there; I do not remember of his going out; I do not remember whether he did or not.

Q. You cannot tell but that he did go out? A. No, sir.

Q. You cannot say but what he and the Deputy Warden went out together? A. No, sir.

Q. Are you sure that you did not go from the District Attorney's office to some other place? A. To the best of my recollection, I went from the District Attorney's office to my father's.

Q. You cannot be mistaken? A. I do not think I am.

Q. Is it possible that you could be mistaken? A. I might be mistaken, but I think I can positively say that we went directly from there to my father's store.

Q. Was this a large white building in which you were? A. There are two buildings, I think, right together; it was not the

big white building; I think it was the one standing on the side next the Park, or the street going to the Tombs.

Q. What was the color of the building that you went into? A. I do not know whether it was brown or white.

Q. Can you say positively that you did not go into another building in company with the warden? A. I am pretty sure I did not.

Q. You are not quite sure? A. Not quite, of course; it is so long ago, and I have not paid attention to it.

Q. You were somewhat excited? A. Yes, sir; that is the reason.

Q. It is about a year and a half ago? A. Yes, sir.

Q. You have been busily engaged since that time? A. Yes, sir; and I have been out of the city half the time.

Q. Where do you live? A. At No. 33 Beach street; I am boarding there.

By Mr. PARSONS:

Q. You state that you cannot be quite sure, that you may not have gone into some other room than the District Attorney's office on the occasion of which you speak; are you quite sure that you did not go into any Court on that occasion? A. I am; I know I did not go into a court room, and I am pretty sure I did not go into any other room.

Q. Were you ever in a court room? A. Yes, sir.

Q. In the same court room where Judge Cardozo holds his Court? A. No, sir; I never was in that; the only court-room that I was ever in was in Judge Dowling's Court.

By Mr. TILDEN:

Q. You say that the room that you went into was a little narrow room? A. Yes, sir.

Q. With two or three rooms in succession? A. Yes, sir; three rooms in succession.

Q. Which of them were you in? A. The one that the door led into—the first one.

Q. Did you go into the other rooms? A. No, sir.

By Mr. FLAMMER:

Q. This man that brought you from the Island, you say you don't know whether he left the room where you were, or not? A. I do not know that; he may have done so; I was not looking round the room all the time. I was leaning over in this way, (with his head in his hands).

Q. Do you know whether he left the room for any considerable time or not? A. He could not have left for any considerable time.

Q. If he did leave it, then, what was the length of time that he left? A. I do not think he left over five or ten minutes.

Q. You say you do not think you went to any other place after you left the District Attorney's office, except your father's store? A. No, sir.

Q. Did you go into any other building than where the District Attorney's office is? A. I am pretty sure I did not go into any other building.

Q. Have you any doubt about it at all? A. Just this; that it is so long ago I do not remember the particulars—only the outline.

Q. Were you brought up before any person after you left the District Attorney's office? A. No, sir

Q. Or did you go into any room that had the appearance of a court room? A. No, sir.

Mr. FULLERTON:

I want to call the attention of the Committee to the fact that the record shows that the Court was held before Justices Dowling and Shandley, while the two witnesses who have been examined state that this Term was held before one Justice. The writ is endorsed October 4; notice waived; J. R. Fellows, District Attorney. The words "on his own recognizance," which are underlined, are not in the handwriting of Judge Cardozo.

RICHARD BEAMISH recalled on behalf of Judge Cardozo; examined by Mr. OWEN:

Q. State who held Chambers in January, 1868, of the Supreme Court? A. Mr. Justice Cardozo.

Q. State now, also, who held the General Term of that Court in the same month? A. Justices Barnard, Ingraham and Sutherland.

Mr. OWEN:

I ask permission to read a short order:

"SUPREME COURT—DANIEL B. AMES *v.* JACOB M. AMES and others:

"At a General Term held at the City Hall, in the city of New York, July 3, 1868, an appeal from the order made and entered in this action on November 21, 1869, adjusting the fees and allowances of Peter B. Sweeny, the Referee in this action, having been heard at the General Term of this Court, held January, 1868, it is now, on motion of Ira B. Shaffer, for the said Peter B. Sweeny, the respondent, after hearing Reuben H. Underhill, guardian *ad litem* for the appellant, *ordered* that the said appeal be dismissed, with $10 costs to the respondent." The order at the Special Term was entered on the 21st of November, 1869, before Judge Cardozo became a member of that Court, and the order was made at the General Term when Judge Cardozo was not a member of that Court.

Q. Have you gone over the book of minutes to ascertain the number of references that have been made by different Judges? A. Yes, sir.

Q. Look at this paper, and say if that is a list of the references ordered by each, and by which of the Judges? A. That list is made out from Judge Ingraham's record at Chambers for the year 1867—a list of references ordered by Judge Ingraham. (Put in evidence, and marked Charge, 5 D.)

Q. Now look at this other paper, and state what it is? A. That is an extract made from the Supreme Court Calendar minutes, D. P. Ingraham, Justice, from January, 1870, to January, 1871, of all the references made by Judge Ingraham; it was made by my assistant, Mr. Hoope, under my superintendence.

Q. Do you know whether it is a correct statement from that book of minutes? A. Yes, sir; I went over it with him from the original record. (Put in evidence, and marked Charge, 5 E.)

Q. Was not the list of references, Exhibit 5 D, down to the 1st of January, 1870? A. I think it goes down to 1870.

Q. Look at the paper I now hand you, and state what it is, and by whom it was made? A. This is a record from Justice Sutherland's minutes at Chambers made by my assistant, Mr. Hoope, under my superintendence, and contains a list of references from 1867 down to November 20, 1871.

Q. Do you know that to be a correct extract from the minutes? A. Yes,. sir. (Put in evidence, and marked Charge, 5 F.)

Q. If you please, look at the paper which I now hand you, and state what it is and by whom made? A. It is an extract made by Mr. Hoope, my assistant, under my superintendence, of references made by the Hon. John R. Brady, at Chambers, for the years 1870 and 1871.

Q. State, if you please, whether it is a correct extract from the minutes? A. It is, sir. (Put in evidence, and marked Charge, 5 G.)

Q. Look at this paper, and state who made it and what it is? A. This is a list of references made from the minutes of Hon. G. C. Barrett, for the year 1872, of references ordered by him—extract made from the original minute book; it is kept by me. (Put in evidence, and marked Charge, 5 H.)

Q. Can you state to the Committee what months Judge Barrett has held Chambers since his election? A. The first regular month was the month of January, 1872. He has sat several other times since then.

Q. But has not been assigned? A. No, sir; he has held for another Judge that was away, and not able to preside.

Mr. OWEN:

We have a tabulated statement from the minute book, that

may be convenient to the Committee, which we ask to put in evidence, in which we have selected the names of the persons who are either related to or apparently favorites of the Judges, as Referees. It is tabulated from the papers now in evidence.

By Mr. VAN COTT:

Does that include the references made by Judge Cardozo?

Mr. OWEN:

No; this does not, but the other does.

Q. Did you tabulate this statement yourself? A. It was done under my supervision, by Mr. Hoope, my assistant.

Q. From what? A. From the original record of Judge Ingraham.

Q. And from what record in reference to the other Judges named there? A. Also from the Hon. Josiah Sutherland's original record and the Hon. G. C. Barrett's; from the original record kept by me; also from the record of the Hon. John R. Brady.

Q. I notice some alterations from ink into pencil; do you know who made them? A. I made these myself; I went over the record, and found that there were discrepancies in regard to some of the numbers, and I corrected them in pencil.

Q. Did you examine it yourself? A. Yes, sir. (Put in evidence, and marked Charge, 5 I.)

Q. Look at the paper now handed you, and state what that is, and by whom made, and from what sources? A. That is a record of the Hon. A. Cardozo, in the Supreme Court Chambers, of references ordered by him, made under my supervision by Mr. Hoope, my assistant, from January, 1868, to December 30, 1871.

Q. Does that contain a list of all the references to whomsoever the causes may have been referred? A. Yes, sir.

Q. Does it not also contain a list of the Receiverships? A. Yes, sir.

Q. Where will that be found? A. They are entered in the same minute book; it is mentioned on the margin where a Receiver is appointed.

Q. At the end of that paper all the Receivers are abstracted? A. Yes, sir.

Q. And there is an abstract of the references and to whom made? A. Yes, sir.

Q. Are these abstracts correct as far as you know? A. Yes, sir, so far as I know. (Put in evidence and marked Charge, 5 K.)

Q. Do you know whether or not there was a General Term in June, 1871? A. There was, sir.

Q. Do you know whether the Judges, at the time they were holding the General Term, sat at Chambers? A. Yes, sir.

Q. Did they divide the Chamber business up between them? A. They did, sir.

Q. Can you state whether or not a calendar was made up for * Judge Cardozo, and if so, whether it was sent to room No. 13? A. Yes, sir.

Q. Look at this paper and say if that is the calendar that was made up for Judge Cardozo and sent to Room No. 13? A. Yes, sir; that is the calendar made up by my assistant, Mr. Hoope.

Q. Were those cases heard there at Room No. 13? A. Yes, sir.

Q. Do you know that other cases than those in that list had been sent there and had been heard by Judge Cardozo? A. Yes, sir, frequently.

By Mr. OWEN:

The calender contains 33 cases.

(Put in evidence and marked Charge 5 L.)

By Mr. FULLERTON:

Q. Do you know when the case of Bowne against Leveridge came on for trial? A. Last May or June, I think.

Q. And October also? A. Yes, sir.

Q. Do you recollect that Judge Sutherland went to Room No. 13 to hold his court there, and that the witnesses were so numerous there was no room? A. I hink I heard some mention in regard to it.

By Mr. PARSONS:

Q. Is the paper marked Charge 5 K, purporting to be a list of references made by Judge Cardozo, made up by you from the Chambers minute book kept by you, showing the orders made by Judge Cardozo? A. Yes, sir.

Q. And from no other source? A. No, sir.

Q. Who is Mr. Edlestein, to whom were made, in 1870, by Judge Cardozo, 32 references, and in 1871, 33 references, according to this statement. A. I believe he is a lawyer, practicing.

Q. What is his law firm? A. I believe it is William Edlestein.

Q. Do you mean to state that the law firm of Mr. Edlestein is "William Edlestein?" A. I do not know that he has a partner.

Q. Do you not know perfectly well that his partner is Wm. M. Tweed, Jr.? A. No, sir.

Q. Did you ever hear it? A. I have heard it but I do not know that he has a partner.

Q. Did you ever hear the firm name of Tweed & Edlestein? A. I may have heard it.

Q. Do you mean to state to the Committee that you have no knowledge or reliable information that the law partner of Mr. Edlestein is Wm. M. Tweed, Jr.? A I do not know that Mr. Tweed was ever the partner of Mr. Edlestein, of my own knowledge; I do not know that I ever saw a paper with the name of Tweed & Edlestein on it, that ever reached my hands.

Q. Was not Mr. Edlestein in the office of Brown, Hall & Vanderpoel? A. I think he was, at one time, sir.

Q. When did you begin to prepare these statements showing references by the various Judges? A. It is more than two months ago.

Q. Did you prepare a statement of references made by the Hon. G. G. Barnard? A. I think there was a statement prepared and made.

Q. Can you speak positively upon that point? A. Yes, sir.

Q. Why did you not produce it here? A. I was not subpœnaed to produce it.

Q. Were you subpœnaed to produce these? A. Yes, sir.

Q. Do you mean by a written subpœna? A. No, sir; I do not mean that.

Q. Was it by a verbal subpœna? A. Yes, sir.

Q. At whose request did you make out these statements? A. I made them at the request of several gentlemen.

Q. Have you any objection to name them? A. No, sir.

Q. Please to do so. A. At the request of Justices Ingraham, Barnard, and Cardozo

Q. Will you be certain that Justice Ingraham requested you to make out a statement? A. I will, sir.

Q. When? A. Not a month ago; I believe he was the first to make the request.

Q. Did he request you to make out a list to be furnished to himself? A. Yes, sir.

Q. And did you furnish it to him? A. I did, sir.

Q. By what Judges were made the references, the list of which Judge Ingraham desired you to furnish? A I think by all the Judges.

Q. Will you be sure about that? A. Yes, sir.

Q. Do you know who is J. J. Lyons, to whom, according to the statement of references made by Judge Cardozo, were referred eighty-two cases in the years 1868-1871? A. I know nothing more about it than that he is a lawyer, practicing at the bar.

Mr. FULLERTON:

We will give you an admission that Mr. Lyons is a nephew of Judge Cardozo's wife, a young lawyer, a son of the Rev. Dr. Lyons. Did you ever see Mr. Lyons? A. Yes, sir.

Q. Do you know what his age is? A. I do not.

Q. Is he a young man? A. Yes, sir.

Q. Quite a young man? A. A man about 25 or 30.

Q. How long have you known him as a lawyer? A. I think I have known him at least five years.

Q. Are any of the references stated in this list of Judge Cardozo's entered upon that book in which you state that you made entries of undertakings in injunction and arrest suits? A. No, sir.

Q. Are all these references upon Judge Cardozo's list taken from your books of minutes produced before the committee? A. Yes, sir.

Q. Do the entries in these books in all cases show the name of the Refereee? A. Pretty much all.

Q. How do you get at the names of the Referees in cases where the minute books do not show the name? A. I do not think there is a case on record but what is to be found in the minute book.

Q. Did you, for the purpose of ascertaining the name of the Referee, in some cases, examine the original orders? A. I did not, sir.

Q. Do you mean to state, that from your minute book alone, you could make up the complete list? A. Yes, sir.

Q. Giving the name of the Referee in every case? A. The Referee, and in a great many cases, the Receivers.

Q. Have you entered upon these lists the cases in which the references were by consent? A. I think I have, sir.

Q. Will you state where; show in any list where is indicated that the reference was by consent? A. I cannot state by these lists.

Q. Have you designated upon these lists the cases in which references were by consent? A. I think not, sir.

Q. Do not these lists embrace not only references in foreclosure and partition suits, but also all litigated references, and references in litigated cases? A. I believe it contains pretty much a list of the references of every kind.

Q. In litigated cases, are not the references usually by consent? A. No, sir, I think not.

Q. Have you any knowledge on that subject? A. I have knowledge of some cases where, by consent, a Referee has been named, and that Referee was not put in the order.

Q. You mean that the Judge struck out the name consented to, and inserted another name? A. Sometimes

Q. Can you not tell how the fact is, as to whether in litigated cases the Referee is not usually named by consent? A. In the majority of cases, I think not.

Q. Do you know? My question is, have you any knowledge on the subject? A. No, sir, I do not think I can speak definitely in regard to that.

By Mr. Prince:

Q. These lists include references to compute interest in foreclosure suits? A. Yes, sir.

By Mr. Fullerton:

Q. An when did you make them? A. I think they were made only a short time ago.

Q. Since this investigation commenced? A. Yes, sir.

Q. Those you made at Judge Cardozo's request were made

since the commencement of these investigations? A. Yes, sir; two lists.

By Mr. PARSONS:

Q. What are these two lists; are they the list of Judge Ingraham for the years 1867, 1868, 1869, and the list of Judge Barrett from January the 2d to February 23d, 1872? A. Yes, sir, they are the two.

Q. In reference to this calendar, which you say in June, 1871, was sent to room 13. How was that calendar made up? A. That was made up from the general calendar which is in Chambers; a number of cases were set down by the Judge presiding at Chambers, to be heard by the Judges sitting in the other rooms, and these lists were made for the Judges to assist in holding Chambers.

Q. And that is the list that was made up in June, 1871, for Judge Cardozo? A. Yes, sir.

Q. Who designated room No. 13 as the place where that list was to be heard? A. I suppose the Judge presiding at Chambers.

Q. Do you know anything about it? A. I have frequently heard him say "such a case will be heard in room No. 13."

Q. Does room No. 13 appear in the calendar? A. No, sir.

Q. And when the Judge sitting in Chambers stated that a case was to be heard in room 13, before what Judge was it to be heard? A. Before Judge Cardozo.

By Mr. NILES:

Q. How comes it that these cases run so irregularly as to their numbers; were they sent one by one? A. As the general calendar was called through, a certain number were selected from the general calendar to be sent to each Judge.

Q. Were these all designated at one time, at the beginning of the Term? A. Generally on the first day of Term; the first day the cases are called through, and after that they were selected.

Q. Was this calendar made up at the beginning of Term? A. Yes, sir; on the first or second day.

By Mr. FULLERTON:

Was there a calendar similar to that, sent to another Judge? A. Yes, sir; to two or three Judges sitting in different rooms; probably one in Equity Term room, one in General Term room and another in Chambers.

Q. Was not that the case when the Judges were engaged sitting in General Term? A. Yes sir.

Q. The Judges went to hold Chambers who were sitting in General Term? A. Yes, sir.

Q. Then they divided up the work between them? A. Yes, sir; they generally all sat from 10 to 11 o'clock to hear *ex parte* business.

The Committee adjourned till 7½ P. M. to-morrow evening.

IN THE MATTER *of the charges preferred by the* BAR ASSOCIATION *of New York vs.* HON. GEORGE G. BARNARD, *Justice of the Supreme Court, before the* JUDICIARY COMMITTEE *of the Assembly of the State of New York, March 7th,* 1872.

Present:—HON. L. B. PRINCE, Chairman, and MESSRS. TILDEN, NILES, VEDDER, HILL, STRAHAN, and FLAMMER.

RUFUS F. ANDREWS, Esq., appeared as counsel for JUDGE BARNARD.

MR. ANDREWS.

I have a few preliminary requests to make of the Committee, and as there is no witness here I will avail myself of the opportunity to do so now. I presented, after consultation with my client, for whom I appear, to this Committee last week, or handed to my friend, Mr. Niles, a protest against the right of Mr. Tilden, or, at least, the justice of Mr. Tilden sitting on this Committee. I don't know whether that protest has been before the Committee and acted upon, or not. If not, I should like to have the subject taken up by the Committee and considered. We are ready to submit to trial. We want simply an impartial tribunal. We are informed, whether justly or unjustly I cannot say, that Mr. Tilden has been very much prejudiced against the Judges of the Courts who are put upon trial, and it has been communicated to us that statements havn been made by him in the papers.

MR. PRINCE:

It would be as well to interrupt right here, and say that this communication was received, and the Committee conceive they have no jurisdiction to entertain any question as to the qualification of a member of the Committee. It has been laid on the table, and nothing further on that point will be determined.

MR. ANDREWS:

I desire that that protest shall constitute a part of the record of the proceedings. That has always been allowed in every instance I have read about, or known anything about.

MR. PRINCE:

I am unable to say what action will be taken on that. We are here simply to take testimony, and, as an act of courtesy, the Judge is permitted to be represented here by counsel.

MR. ANDREWS:

I have an additional request to make, and that is, that these proceedings be made public, and I will give my reasons briefly for desiring them to be public.

Mr. PRINCE:

I think any discussion on matters of this kind is entirely out of order. The Committee proposes to go on in its own way.

MR. ANDREWS:

I suppose the Committee will allow proper objections to be made.

MR. PRINCE:

I think not. We are not here to hear objections; we are here to investigate.

MR. ANDREWS:

I call the attention of the Committee to the fact that in the *Tribune* it is announced that Mr. Tilden announced that four articles had been agreed upon as against one of the Judges.

MR. TILDEN:

There is not the slightest truth in it. I don't know that it is there.

MR. ANDREWS:

The *Tribune* said the case looked very bad for Judge Cardozo. If this case is to be conducted in that way, and members of the Committee are to go outside and make remarks like that, I want the proceedings public. I have not seen that Mr. Tilden has disputed that at all.

MR. TILDEN:

It is proper to state that Mr. Tilden cannot watch the newspapers to contradict every unfounded rumor. It is not true that Mr. Tilden said what was in the *Tribune* newspaper in regard to Judge Cardozo. Mr. Tilden received, the morning after that appeared, an apology from one of the editors of that journal for having published such a rumor, which was picked up somewhere as a matter of gossip from some young lawyer, as he said. Mr. Tilden received a message from Mr. Shanks that he was not responsible for that, and knew nothing about it.

Mr. NILES:

As far as I am concerned, I would like to have this understood at the outset, that whenever I say anything I only speak for myself; it must not be understood I speak for any one else. As far as regards making the examination public, I have expressed my decided conviction that it is best for all parties that it should be pursued as we have been pursuing it. At the same time, I have expressed what is my present conviction, that it is not a matter of conscience with us, but a mere matter of policy, and if the accused and the people want to make it public, I am perfectly willing. On the other hand, we will consider very

carefully the suggestion made in regard to making this protest a part of the record, and, if it is proper as far as I am concerned, I will be very glad to make it so, but our idea is, that we can no more decide as to the qualification of one of our members, we being mere creatures of the Legislature, than the Court of Appeals could undertake to decide the qualifications of one of its members to sit there, so I of course rule, as I believe the majority of the Committee do, that we have no power over that matter in any way, as to excluding any one. My experience with this Committee has satisfied me entirely, that the Committee mean to be absolutely just and true, every member of it, so far as I know. Outside, I don't know what occurs.

Mr. ANDREWS:

I desire to make a motion, and that is, in reference to the charges which have been preferred against Judge Barnard of which I have a copy. I find a portion of them date back to 1868. Judge Barnard was elected in the Fall of 1868 to the office he now fills—re-elected, and took his seat on January 1, 1869. The precedents are all against going back of the time when he was elected to the office which he now fills, and the Legislature has no jurisdiction over anything which he may have done in the office he held before as Judge of the Supreme Court. That was decided in Congress in the case of O. B. Mattison, in 1857–1858, vol. 36, part 2d, pp. 1389 to 1392, where that question was raised.

Mr. TILDEN:

I don't think the case of Mattison applies. Mattison resigned.

THE CHAIRMAN:

Those were proceedings to expel him from Congress.

Mr. ANDREWS:

Yes, sir; they claimed there they had no right to go behind that, and it was so decided. I am requested to ask the question whether, if this Committee should find that something was done that was wrong during the former term of office of Judge Barnard in 1868, whether they could make a report on that if they found nothing wrong in 1869, whether this Legislature could take any jurisdiction at all.

Mr. TILDEN:

The Committee will doubtless consider that question. My own impression is, that in a case of impeachment, your ground would be stronger than in the Mattison case. I think you are mistaken in it being decided in that case.

Mr ANDREWS:

Mr. Reynolds, who writes to me, gives me the pages and the

volume. I find some dozen or two of the discharges under Habeas Corpuses, in the year 1868 to start with, in the charges.

IN THE MATTER *of the charges preferred against the* HON. JUDGE CARDOZO:

NEW YORK, March 7th, 1872.

The Committee met at 7.30 P. M., pursuant to adjournment.

CONRAD N. JORDAN, called by the Committee, sworn:

Examined by Mr. VAN COTT:

Q. You are the gentleman who was appointed by the Court as Receiver for the Gold Exchange Bank, in 1869? A. Yes, sir.

Q. Do you remember the circumstances of the appointment of Mr. Brown as Receiver of the Bank before you? A. I do, sir.

Q. At the time Mr. Brown was appointed Receiver, 29th of September, 1869, what was the condition of the Bank as to its ability to go on with its business, if a Receiver had not been appointed? A. I had made all the arrangements necessary to carry the Bank through, and resuming its ordinary relations with the Clearing House.

Q. You had completed those arrangements? A. I had completed those arrangements, and as the last person was signing the agreement, it was announced that there had been a Receiver appointed; I had made all the arrangements, and discussed the whole matter with the Bank officials, at the Clearing House, and they had consented to make the arrangements which I had proposed.

Q. It was substantially consummated? A. Yes, sir.

Q. That was before you had heard anything of the appointment of Brown as Receiver? A. Yes, sir.

Q. How soon after that did you hear of Brown's appointment? A. Immediately upon the performance of this act; the evening before I had met Mr. Vermilyea, Chairman of the Committee, and requested him to call a meeting of the officers for the next morning; the meeting was called, but they did not come promptly, and it occupied some time in discussion; I had to state to one or two, separately, the condition of the Gold Exchange Bank; instead of stating it collectively to the whole body, as I should have done, I had to state it to two or three at a time.

Q. Do you mean the Bank officers of the Clearing House? A. The Bank officers of the New York Clearing House; it was about half past 11 o'clock; if they had met at 10 o'clock, promptly, the whole affair would have been closed, and the necessary arrangements made, I think, before the notice of the Receiver's appointment had been made.

Q. Do you remember what time the notice of the Receiver's

appointment came down on the 29th? A. I should think it was about half past 11 o'clock; I cannot state the hour exactly; I had a great deal of business to do, and I could not say how long the discussion occupied.

Q. From the 29th of September to the 9th of October, what had been done by the Receiver, Brown, to settle the unsettled affairs and start the Bank in the prosecution of its business? A. Nothing, sir.

Q. What did Mr. Brown do as Receiver. Were you familiar with all that was going on at the time? A. Yes, sir; I had been made acting manager; he received the funds then in the custody of the Bank; other than that, I think he did nothing.

By Mr. NILES:

Q. What do you mean by receiving the funds; did he take them away from the Bank? A. My impression is that he took them away from the Bank building and placed them with the Broadway Bank, if I remember right.

Q. And he continued simply in possession of the funds, and made no settlement down to the time when you were substituted as Receiver? A. The only settlements made were those made by the order of the Court; those were paid over before the balance of the funds reached me.

Q. That being on the 9th of October? A. Yes, sir.

By Mr. VAN COTT:

Q. Tell me what negotiations took place for your substitution in place of Brown as Receiver. First, who negotiated on the part of the Bank, and who on the other side, to obtain the payment to Willard & Company, and to Heath & Company. Who negotiated on the part of the Bank? A. Mr. Sauzade and myself, as acting manager; Mr. Tanner, one of the Directors, and Mr. Martin, of the firm of Martin & Smith, my counsel.

Q. Who on the other side? A. Mr. Willard, of Willard & Company; Mr. Jay Gould, Mr. Heath, Mr. Vanderpoel, Mr. Martins, or Martin, Mr. Shearman, and F. A. Lane.

Q. They were on the other side? A. Yes, sir.

By Mr. NILES:

Q. You say that Mr. Martin, of the firm of Martin & Smith, was your counsel. Do you mean your counsel as Receiver? A. No, sir; as counsel of the Bank; I was then acting as manager of the Bank.

Q. I want to know whether they were counsel of the Bank, or your counsel? A. Counsel of the Bank; I may as well state that my counsel, as Receiver, was Chapman, Crowell & Scott; that was after I was appointed Receiver.

Q. You finally consented to the order; your name was signed consenting to it? A. Yes, sir.

Q. Was that consent voluntary, or were the payments directed by that order insisted upon by the other parties to the negotiation? A. They were insisted upon.

Mr. FULLERTON:

What has this to do with Judge Cardozo?

Mr. VAN COTT:

We have gone into the whole subject.

Mr. PRINCE:

A conspiracy is alleged and we are taking the proof.

Mr. VAN COTT:

Q. You say that it was insisted upon by the other parties that these payments should be made. As a condition of what? A. As a condition precedent to my assuming control of the Bank, through my appointment as Receiver.

Q. If you could have got control of the Bank without consenting to these terms, would you have conceded to these terms? A. No, sir.

Q. Was there any struggle against the terms? A. It occupied from 8 o'clock in the evening until half-past 1 next morning, in the discussion.

Q. It was finally conceded because you could do no better? A. Yes, sir.

Q. Do you remember, after the payments that were made by your predecessor of the Receiver's fees, and the lawyer's fees, and the payments to Williard & Company, and to Heath & Company, what amount was left in the hands of Brown, and paid over to you? A. I cannot state.

Q. You gave him a receipt? A. I gave him a receipt; that gives the exact statement.

Q. That is in evidence. What loss did the Bank suffer beyond these payments to the Receiver and the lawyer; what loss did the Bank suffer by that interruption of its business by the appointment of a Receiver? A. By my calculation, the sum of $400,000.

By Mr. PRINCE:

Q. How do you estimate that? A. In the first place, by actual knowledge The Bank had a certain surplus, and I could make this a matter of certainty almost, by taking the residuum left as against the amount on September 23 or September 20, the day that the previous quarterly statement was made. The cause of the loss was simply the difference between receiving gold at 145 per cent. to 150 per cent., and selling it at 130 or 131 per cent., which is at about the price they sold it. This was, of course, the cause of the loss.

By Mr. NILES:

Q. Why were you compelled to sell at 130 instead of 150? A. The Bank had already paid for it at these higher prices, but the parties were not able to take it.

Q. How would you have got rid of it if no Receiver was appointed? A. Please, explain your question.

Q. You say you were compelled to sell? A. The Bank would have lost less, because we could have sold it at a point of 135 instead of 130, which would have made a difference on the amount to be received by the Bank of $150,000 upon the item of gold to be received alone; that is, the gold would have gone out at 135, instead of 130, if we had had prompt action.

Q. Your opportunity to deliver your gold at the best terms possible was suspended? A. Yes, sir; that can be verified; if I had taken the ordinary position of Receiver, and waited to have settled, the Bank would never have realized a cent; it would have broken all these people.

Q. What really was wanted, after the Black Friday trouble, was quick action? A. Yes; prompt action—not to have waited a day or an hour, but to have made the arrangements at once.

Q. That would have saved a large amount? A. Yes, sir; the Bank would have lost a certain amount of money, but not so much.

Q. Would the individuals dealing with the Bank have met any additional loss if there had been a prompt settlement? A. No, sir, I think not; it would have come nearer to what may be called the equity of settlement; those parties who owed would have settled the price nearer to the sum at which the gold was received by the Bank.

By Mr. OWEN:

Q. Do you know whether the counsel of the Bank, or any one, asked the Judge to dissolve or modify the order, or change it in any way? A. No, sir.

By Mr. FULLERTON:

Q. When was Mr. Brown appointed Receiver? A. I think it was the 29th of September.

Q. Black Friday was the 24th? A. Yes, sir.

Q. And Saturday was the 25th, and Monday the 27th? A. I may say that the whole of Sunday was spent in negotiations.

Q. Why was not prompt settlement made on the 27th and 28th, Monday and Tuesday? A. For the reason that the whole thing was in confusion; I had made these arrangements for a prompt settlement.

Q. Why not on Saturday? A. On Saturday it would have been utterly impossible to reconcile the discrepancies between those gentlemen.

Q. Could it not have been done on Monday? A. No, sir.

Q. Or on Tuesday? A. No, sir; the Bank had to resume its relations with the Clearing House.

Q. There was an obstacle, then, to its resuming its relations with the Clearing House? A. Yes, sir; the general confusion among bankers.

Q. Did you not, late on Tuesday night, suggest the only method to carry the thing through? A. No, I can hardly say I suggested the only method.

Q. Did you not suggest the method that was adopted? A. Not so far as relates to this payment of the sums of money.

Q. Who did suggest it? I think it was the joint action of the parties there.

Q. When? A. On Monday night.

Q. You spoke of Tuesday night? A. It was Monday night; I am not clear as to dates upon the subject.

Q. When did you call the meeting? A. I cannot answer that.

Q. I understand you to say that you called the officers of the Bank together? A. No, sir; the meeting at the Clearing-house was on Tuesday morning.

Q. Was it not on Wednesday morning? A. I think not.

Q. Was it not on the morning that the injunction was served? A. Yes, sir.

Q. And was not the injunction served when you were winding up the arrangements, and as the last person was about signing? A. I called it on Tuesday.

Q. Tuesday was the 28th, and Wednesday the 29th. The injunction was served about half past 11 on Wednesday the 29th? A. We had a meeting, and I asked Mr. Vermilyea, in this house, to call a meeting of the officers.

Q Wednesday? A. I think on Tuesday, it might have been on Tuesday or Wednesday; but as I was about to explain, I am not positive as to dates.

Q. You had a meeting? A. Yes, sir.

Q. And certain sums were subscribed? A. Yes, sir.

Q. Just at the last man was subscribing his name, news came that the Receiver was appointed? A. Yes, sir.

Q. Then the Receiver was appointed on Wednesday. Now was not the meeting on Wednesday? A. If those dates be correct, the meeting was on Wednesday.

Q. Then when was that meeting held on Wednesday called? A. I asked Mr. Vermilyea to call it on Tuesday night.

Q. It was called for Wednesday morning? A. If those dates are correct; my impression was that is was Monday night or Tuesday.

Q. That scheme which you say would have resulted in arranging the affairs of the Bank, was consummated on Wednesday morning? A. Yes, sir.

Q. And everything was in confusion up to that time? A. Yes, sir.

By Mr. OWEN:

Q. Was Judge Cardozo present at any of those interviews? A. No, sir.

Q. Or any one representing him or acting for him? A. That I cannot say.

Q. You did not hear of any? A. No, sir.

By Mr. FULLERTON:

Q. What was this subscription that you speak of? A. A subscription by the Banks to take a certain amount of gold at a certain fixed price, in order to enable the Gold Exchange Bank to resume its ordinary relations with the Clearing-house.

Q. Money was necessary to effect that? A. Yes, sir.

Q. Notwithstanding the means of the Bank, they wanted outside help? A. Yes, sir.

Q. And you had got that? A. Yes, sir.

Q. And that was part of your arrangement on Wednesday morning? A. Yes, sir.

By Mr. OWEN:

Q. Did you know that the President had taken the funds to New Jersey? A. I am not aware that he did.

By Mr. FULLERTON:

Q. Did you hear that he contemplated doing so? A. I did, but that was not the case that he did that; the funds never got further than the Third National Bank.

Q. Did you approve of doing it? A. I was not a party consenting.

Q. Did you know of settlements being made on Saturday and Sunday by the Bank where parties received monies to which they were not entitled? A. By hearsay; of my own personal knowledge, no.

Q. That was not good management? A. I do not like to be asked to pass upon the conduct of another Bank officer. I simply say I would not have done it.

Q. There was some uneasiness about the Bank? A. Yes, sir; I should think there was.

Q. What was the fear or apprehension? A. The fear was that the people who were creditors of the Bank would not obtain their money.

Q. Why? A. Owing to the fact of non-settlement of its accounts on the 24th of September.

Q. And the non-settlement of accounts growing out of what? A. Out of the failure of William Belden & Company to comply with their contracts, and also the failure of Speyers to comply with his contracts.

Q. And of others? A. The others were the result of the failure of Belden and Speyers.

By Mr. Owen:

Q. Were Martin & Smith requested to appeal to the Court to vacate the injunction and Receivership? A. That I do not know.

Q. Do you know that an injunction had been granted by Judge Clerke to any person, and served on the Bank early in the morning? A. In reference to some particular account I think there was some such injunction.

Q. You knew at the time of this injunction between the parties? A. I could hardly be said to have known of it; I had heard of it.

By Mr. Fullerton:

Q. That embarrassed the Bank somewhat? A. No, I think not; that was an individual relation—a relation between certain parties outside of the Bank.

Q. The relations were somewhat complicated down there sometimes? A. They were rather mixed.

Q. And did not the stoppage of the payments of that individual claim complicate matters with other parties? A. I can only say, for myself, that I did not regard it at all, or consider it affecting the Bank in any way, or I would not have attempted to make the negotiations I did.

By Mr. Niles:

Q. That, as I understand, was an injunction enjoining the Bank not to pay out certain money that it had in its hands? A. Certain money it had in hand, to certain parties.

By Mr. Fullerton:

Q. You were the active manager of the institution from the time Mr Brown was appointed? A. Yes, sir.

Q. Under whose direction did you act? A. The direction of the Board.

Q. Who superintended it? A. I suppose we may say Mr. Sauzade, as acting President.

Q. Had not Mr. Brown anything to do with it? A. He did not seem to have anything to do with it, except to take the money.

Q. Was anything done contrary to his wishes or direction? A. I think I got possession of some information, without his direction, and against his orders; that is, he wanted to control the information, and I tried to procure it without reference to him.

Q. Did he control, as the head, after he was appointed? Was he not regarded as head? A. Yes, sir, I should say he was.

Q. Was not the authority derived from him to do anything there? A. I had no authority from him.

Q. Did not Mr. Sauzade? A. I think not.

Q. Do you mean to say that they went on and acted independent of Mr. Brown? A. I think no action was taken, except an attempt to procure information.

Q. Was any action taken? A. Do you mean by an officer of the Bank.

Q. Was not something done with the funds? A. Mr. Brown had the custody of those.

Q. How did he get the custody? A. They delivered them to him.

Q. Who delivered them? A. The officers of the Bank.

Q. No settlement was made while he was Receiver? A. Not that I know of.

Q. Were the accounts being looked into? A. They were.

Q. By whom? A. By me.

Q. Was not that by his permission? Was he not there approving of what was done, and regarded as the responsible head? A. As far as the custody of the money is concerned, yes; so far as the attempt to procure information, no.

Q. Did not Mr. Brown have some one there in charge, when he was not there himself? A. Yes, sir.

Q. Who was it? A. I think he had a clerk of his, and in addition had a number of men as deputy sheriffs, who were the biggest blackguards that I ever looked at.

By Mr. Prince:

Q. Was Mr. Brown there? A. I think—very generally.

Q. How much time do you think? A. Of that I can give you no information, owing to the nature of my duties as Cashier of another Bank, I only went there to give directions to the clerks to procure certain information; they were at work at these accounts and I received the results in the evening; they were locked up by Mr. Brown at night.

Q. What was locked up? A. The different forms from which I procured my information.

Q. Did you see no money paid out during his time, except under that order? A. Except under the order, I think not.

Q. Was money received during that time? A. Yes, sir.

Q. Each day? A. No, sir; no money was received except certain collections for the American Exchange Bank.

Q. Did Mr. Brown devote his entire attention during that time to that business? A. I should say that in person or by deputy, he did.

Q. I mean in person? A. In person, no.

By Mr. Fullerton:

Q. Were you there during the day time? A. I went there at different hours through the day; I was called there at different times by different facts transpiring; I went there the great bulk of my time, in my endeavor to find information.

Q. Did you always find Mr. Brown there when you went there? A. No, I think not.

Q. You found some one there who represented him? A. Yes, all these officers.

By Mr. PRINCE:

Q. What is the time of an ordinary clerk worth in such a place? A. In a position of trust, I should say he was worth probably $2,000 a year.

Q. Seven or eight dollars a day? A. Yes, sir.

By Mr. VAN COTT:

Q. You say that you were Cashier of another Bank; what Bank was it? A. The Third National Bank.

Q. And now are? A. Yes, sir.

Q. You spoke of certain officers, Deputy Sheriff's, being there, brought there by Mr. Brown. What particular service, beyond a mere police service, or guardians of the Bank, did they perform? A. None whatever.

Q. And I understood you that no business whatever was done and no transactions made in the Bank during all that time? A. No, sir.

Q. And what Mr. Brown collected was the sum that he received from another Bank that had collected for the Gold Exchange Bank? A. Yes, sir.

Q. Some $7,000 or thereabouts? A. Yes, sir.

Q. You were asked by Mr. Fullerton about an injunction from Judge Clerke. Was not that injunction simply restraining the Bank that held a fund from paying it to the defendant in that suit; was not the Bank a mere stakeholder of the fund for two parties claiming it? A. The Bank was a mere collector of the amount, as between two parties.

Q. And indifferent as to whom it was paid, so that it was paid to the right person? A. Yes sir; I would like to modify my answer so far as this; I do not know what Judge the order came from, but there was such an injunction, I think; the Judge I cannot remember.

Q. It was an injunction, but relating to a special matter? A. Yes, sir, to which I paid no attention.

Q. You spoke of the failure of Belden & Co., and of Speyers, and you were asked what you had heard about it; whose brokers did you hear, if you did hear, were Belden & Co. and Mr. Speyers? A. I cannot say, of my own knowledge; I presume them to have been brokers of James Fisk, Jr., and of Smith, Gould, Martin & Co.

Q. That is what you heard at the time? A. Yes, sir.

By Mr. OWEN:

Q. If you had a large sum of money say $2,000,000, delivered

to you, which you took into your possession and kept t liver over again, would you measure your compensation by the time you were employeed in receiving and holding the money and putting it out? A. I think I should let that remain with the Court, sir.

Q. Let the Court determine it? A. Yes, sir.

By Mr. NILES:

Q. After this money was removed to the Broadway Bank, was there any necessity for these deputy sheriffs or policemen? A. Not to watch an empty safe; no, sir.

By Mr. FULLERTON:

Q. Was there no apprehension of trouble? A. Yes, sir; but it ceased before Mr. Brown's appointment.

Q. All apprehension had passed away? A. All apprehehsion as to the safety of the Bank; that apprehension was through Friday and Saturday and Sunday; it had ceased by that time.

By Mr. TILDEN:

Q. Did you interfere in this matter at the instance of the persons representing the stockholders of the Bank? A. I did, sir.

Q. For what purpose? A. To preserve the Bank from loss and reinstate it as soon as possible.

Q. To prevent it from unnecessary sacrifice? A. Yes, sir.

Q. Did Mr. Brown take any part in the financial management of the Bank or its assets—any personal part, I mean? A. No, sir; except the custody of the funds.

By Mr. NILES:

Q. Did he take any personal part in trying to state these accounts, and get this information as to the condition of the accounts of the Bank? A. So far as I know, not.

By Mr. TILDEN:

Q. What opinion did you form of the value of the services, in regard to the funds to be preserved to the creditors and stockholders—I mean the utility, I do not mean money value? A. I think he was an injury, rather than a benefit.

Q. What was the opinion on that subject of the persons interested in the stock of the Bank? A. I think they concurred with me.

Q. What was your opinion, and, so far as you know, their opinion, about the competency of Mr. Brown to deal with this concern in its then existing situation? A. I should think they thought him incompetent.

Q. How, then, if that was your view, did you come to concede the compensation that was given to him in the order to which you was a party? A. I considered it necessary by the need

there was that the Bank should immediately resume its former position as quickly as it could; it was, in other words, the coercion of the situation.

Q. Why did you not apply to the Court for the appointment of a different Receiver, without submitting to the payment of a sum that you supposed to be extravagant? A. I had no opportunity, sir.

Q. What do you mean by no opportunity? A. So far as I know the case was never presented by our side before the Court.

Q. Why was it not? A. I cannot answer.

Q. You considered it the least of two evils to pay these charges of the Receiver and counsel for the purpose of extricating the Bank? A. Yes, sir.

Q. Was that the view taken of it by the persons whom you represented? A. I think it was, sir.

Q. Can you state what view operated on your mind to prevent your taking the cheaper and more economical method of applying to the Court for relief? A. It was simply this: the value of the Bank rested entirely on its quick resumption of ordinary business, and we all understood, at that time, that without paying these charges and without meeting the wishes of Smith, Gould, Martin & Co., that it was impossible to do so, and we yielded to those wishes.

By Mr. VAN COTT:

Q. You were asked whether the Bank did not need assistance; had not the Bank money enough? A. It had money enough of one kind.

Q. Then the assistance the Bank needed was to have currency substituted for gold? A. Yes, sir.

Q. Had they any need of assistance beyond that? A. No, sir.

Q. To get the banks to take gold and give currency for it? A. Yes, sir.

Q. And that was the assistance for which you negotiated? A. Yes, sir.

By Mr. NILES:

Q. You said you thought it would be impossible to get the Bank into the possession of the stockholders and a Receiver who would be competent to take charge of its affairs; why did you consider that impossible? A. Permit me to give a relation of the case, so far as I know it, and that will give you the reason: Messrs. Osborne & Hammac made, I think, the first motion for a Receiver; immediately upon ascertaining this, while at a session of the Clearing House, when I ascertained the nature of the claim, I took that up myself for my Bank, being perfectly satisfied with the security, which was gold at par; thereupon there

were immediately other papers procured, all by the same attorney, so far as I know, and all in the same interest; that interest was, to my mind, the interest of Smith, Gould, Martin & Co.; it was not merely my opinion, but the opinion of the gentlemen composing the Board of Directors, who were all active men in the street, and knew what was going on there; it was a vital point with Smith, Gould, Martin & Co. to keep the Bank from making clearances, and it seemed to us all necessary to procure the assent of Smith, Gould, Martin & Co.

Q. Why did you not go to Court and represent that it was destroying the Bank? A. The general reputation of the Courts had been such that we declined to go to them.

Q. Do you mean that it was so thought at the time? A. I think that thing was discussed—that we were in the hands of Smith, Gould, Martin & Co., and no one could help us out of it.

By Mr. TILDEN:

Q. In other words, you thought they had an undue ascendency over the Court? A. I should say so. Understand me, that at that time I did not understand what particular Court they were to seek; I knew nothing of what particular Judge they were to seek.

Q. That was the opinion of the proprietors of the Bank? A. So far as I know, it was.

Q. And that was the coercion to which you alluded? A. Yes, sir.

Q. That was the expression at that time? A. Yes, sir.

By Mr. FULLERTON:

Q. When was Osborne's claim presented? A. On Wednesday.

Q. The 29th? A. I think so; I think I went immediately from the Bank and took up the claim.

Q. As soon as you got notice of the Receivership? A. As soon as I ascertained upon whose claim it was, and what the nature of the claim was, I went and took the claim up.

Q. How soon was it after you heard of the Receivership? A. I think the same day.

Q. How many hours? A. I do not think that two hours had elapsed between the two, and yet it may have been the next day; but I am pretty positive it was the same day; I can establish it by my books; they will show.

Q. Who was W. A. Falls, Cashier? A. The Cashier of the Corn Exchange Bank.

Q. Look at this letter, and see if it will refresh your recollection? A. I gave them my check for it on that day.

Q. On which day? A. I think there was a delay of a day or two between the two points—between my paying it and their notifying Osborne & Kammac.

Q. When did they notify Osborne & Kammac? A. About the 2d of October, according to this letter.

Q. Were there not some other appointments of Receiver before the 2d of October? A. Yes, but I immediately went and took that up; I immediately went and made the necessary arrangement for taking it up; I can verify the facts by my books, and could tell when I gave the check; as I previously stated, these dates have gone from my memory, for I was very much engaged at that time.

Q. Was the check paid? A. It was paid by me; I took up the difference; I can make that clear by explaining the relations of the clearing-house and the character of the claim; it was a re-assessment; I, knowing the nature of the security, took up the claim.

Q. Did you give a check? A. I gave my check, as Cashier, for $37,000.

Q. Was that your portion? A. No, it was their portion of this re-assessment; I had already taken up my portion of the assessment, and I did not make any claim upon the parties dealing with me, because I was satisfied with the security; it is not customary to make such reclamations.

By Mr. VAN COTT:

Q. Look at the stamp of "paid" upon that, and see whether that gives you the time you took it up? A. This is the original obligation; this went through the Clearing House upon September 28th; thereupon the Bank was notified that the New York Gold Exchange Bank had failed to respond to a certain proportion of this amount; I think the amount was $37,000; the creditor banks were reassessed by the Clearing House Committee to the amount they contributed, and the Gold Exchange Bank lodged with the Clearing House gold at par, as security for the deficiency; that deficiency was reported to the Bank, as appears by that letter, on the 29th; the Bank returned that to Osborne & Kammac as a deficiency for which they would make them responsible; Osborne & Kammac commenced proceedings, and on my learning that they had procured a Receiver, I took up the liability resulting from the exchange of that check, and held it.

Q. On what day was that paid? A. The day, I am pretty positive, that I heard of the Receivership; and yet you must bear in mind that I am not positive on the dates; I must verify this by my books—the Cashier's check that I gave to take it up, which I can produce.

By Mr. NILES:

Q. Do I understand you that on the day that it went through the Exchange it was paid down to about 30,000 and odd dollars? A. Yes, sir.

Q. Was there any day after the 28th that there was $58,000 due on it? A. No, sir.

By Mr. VAN COTT:

Q. And I understand that the Gold Exchange Bank put gold at par in the custody of the Clearing House as security? A. Yes, sir.

By Mr. TILDEN:

Q. Then it was secure all the time? A. Yes, sir, perfectly secure.

Q. There was no possibility of any deficiency in it? A. No, sir; the figures I may not have given accurately, but I can get the check.

By Mr. PRINCE:

Q. When you say that the Gold Exchange Bank deposited gold at par with the Clearing House, as security for this amount, you mean that for each dollar in currency of deficiency on this check was deposited a dollar in gold? A. Yes, sir.

Q. And that stood there as security for the payment of that check? A. Yes, sir.

Q. And with gold at a premium at that time? A. A premium ranging from 31 to 35.

By Mr. FULLERTON:

Q. That deposit being there, could Osborne & Kammac get their money at once? A. They had already obtained their money; when they deposited their check for $58,000 they had already obtained certifications on it to that extent; the point was that the Bank claimed to hold them responsible for ultimate loss resulting from that gold pledge.

By Mr. TILDEN:

Q. The Bank looked to them to guarrantee the pledge? A. That was all.

Q. And they lodged ample security in gold? A. Yes, sir; Osborne & Kammac had the money, but not in their custody.

Q. The only question was whether the Bank would have a drawback on them? A. Yes, sir.

By Mr. FULLERTON:

Q. But if the check was not paid the Bank would have had a drawback on them? A. But they had the gold.

By Mr. PRINCE:

Q. The only possible event in which Osborne & Kammac could lose, would be if the gold went below par? A. Yes, sir. And I would also say that there may have been interest upon that money during the interval.

Q. Gold has never been worth less than currency between that time and this? A. No, sir; I have not heard it.

ROBERT YELVERTON, recalled; examined by Mr. FULLERTON:

Q. State the money Judge Cardozo drew out of the Mechanics' Bank during each month which your account covers that has been produced here; state the sums and the number of checks by which they were drawn out? A.:

1868.		*No. of Checks.*
January	$1,133	22
February	280	10
March	392	14
April	2,002	26
May	738	18
June	742	17
July	2,006	25
August	685	11
September	3,448	15
October	3,080	27
November	1,365	19
December	918	22
1869.		
January	664	19
February	1,117	19
March	468	21
April	755	25
May	1,434	26
June	1,347	26
July	1,437	28
August	1,044	18
September	2,832	37
October	854	18
November	1,386	25
December	11,984	29
1870.		
January	1,783	29
February	1,277	28
March	906	32
April	907	25
May	1,089	22
June	1,416	22
July	6,658	30
August	2,482	24
September	1,730	34
October	19,580	35
November	5,449	37
December	4,099	33

1871.		*No. of Checks.*
January - - - -	7,040	35
February - - - -	2,058	33
March - - - -	6,568	20
April - - - -	1,417	29
May - - - -	2,095	34
June - - - -	11,878	29
July - - - -	1,742	26
August - - - -	1,388	17
September - - - -	1,657	37
October - - - -	3,509	32
November - - - -	5,828	33
December - - - -	1,903	36
1872		
January - - - -	2,363	34
February - - - -	612 (up to the time this account was made)	8

WITNESS:

I did not add up the account.

Q. Who asked you to look over the account in the first instance? A. Mr. Stickney.

Q. Who was it that assisted you? A. No one until the last few days; then a Mr. Tainter assisted me—within the last four days.

Q. Who is Mr. Tainter? A. A gentleman that lives in this city, formerly a Stock Exchange Broker.

Q. Who obtained his services? A. Mr. Stickney and Mr. Parsons told me they had engaged him to assist me, as I would make better progress.

By Mr. PARSONS:

Q. In examining the minutes of your testimony, as well as I can ascertain, you have omitted to state the balance to the credit of Judge Cardozo in the Mechanics' Bank, September 13, 1869, when was made a deposit to his credit of $1,017; and again on October 26, 1869, when was made a deposit to his credit of $245 in each case in bills. Will you please to state what was, at these respective dates, the balances to the credit of Judge Cardozo in the Mechanics' Bank, and in each case make a statement of the balance immediately preceding the deposit and the amount to which it was increased by the deposit? A. September 13, 1869, balance to the credit of A. Cardozo in the Mechanics' Bank, $2,277.23; deposit, $1,017, making a balance of $3,234.24.

Q. When next after that was a deposit made by Judge Cardozo in the United States Trust Company, from his account in the Mechanics' Bank, and what was the amount? A. November 8, 1869, a deposit in the United States Trust Company of $2,250.

Q. Answer as to the deposit in bills of $245 on October 26 A. October 26th, balance to Judge Cardozo's credit in the Mechanics' Bank was $3,583.53; he deposited $245, making the amount to his credit, $3,828.53.

Q. What was the next deposit in the Trust Company? A. On the 9th of November, $2,250.

Q. Have you examined Judge Cardozo's account to see whether, prior to the deposits in bills to his credit in the Mechanics' Bank, in respect to which you have testified, he drew from that Bank an amount corresponding to those deposits, and which could have been repaid by those deposits? A. I have.

Q. What is the fact? A. I find no such debits within thirty days previous.

Q. Do you find any such debits in any case, without regard to the length of time preceding? A. I did not go back further than about thirty days or perhaps a little longer; I found no such debits.

Q. On August 19, 1870, there was a deposit to Judge Cardozo in the Mechanics' Bank of $8,700. Have you examined the account in the Mechanics' Banking Association of Mr. Gratz Nathan, to see whether there was any deposit by him in the Bank prior to August 19, 1870, of any amount corresponding, or nearly corresponding, to the deposit of $8,700? A. On the 27th of July, 1870, there was a deposit in the Mechanics' Banking Association of $7,586.69.

Q. Is that the only such deposit to Mr. Nathan's account that you can find? A. I cannot answer that without further examination.

Q. Will you please examine and see—look back to the commencement of the month? A. On July 12 there was a deposit of $7,882.35.

Q. Between that date and August 19, 1870, is the only deposit of any amount which approximates to $8,700, that to which you have referred as made on July 27? A. Yes, sir.

Q. Have you investigated the deposit made by Mr. Nathan in the Mechanics' Banking Association on July 27, 1870, for the purpose of seeing the sources from which that deposit came? A. I have.

Q. State, if you please, from what source that deposit came? A. The deposit was three checks; one of $50; one of $2,536.69, and one of $5,000, making in all, $7,586.69. In regard to the checks, I have investigated and can state where they were from.

Q. State? A. The check of $2,536.69 was a check of the United States Trust Company on the Manhattan Bank, and I have examined the stub of the check book of the United States Trust Company, which has on it, "July 27, 1870, Supreme Court, Brett *v.* Van Voorhies and others, $2,421.94 and $114.75 added together, making $2,536.29, Gratz Nathan, 23." The

check of $5,000 was a check of J. W. Howe on the St. Nicholas Bank, dated July 27, 1870, to the order of Gratz Nathan, Referee, and endorsed by him as Referee, and also endorsed "for deposit," Gratz Nathan. Also, on the face of the check, in red pencil marks, "56," indicating the Bank in which the check was deposited.

Q. What bank was that? A. The Mechanics' Banking Association. Also, on the face of the check was written, "Brett and another *v.* Van Voorhies, *et al.*'

Q. Do these two checks, with the check of $50, make up the amount of Mr. Nathan's deposit on that day, July 27, 1870? A. Yes, sir.

Q. And does the note on the one check, and on the stub of the other check, in each case refer to the same suit? A. They appear to.

Q. Brett and another *v.* Van Voorhies and others? A. Yes, sir.

Q. Your attention was called by Judge Fullerton to certain checks drawn by Judge Cardozo, and charged to his account in the Mechanics' Bank for amounts much larger than those for which his checks were ordinarily drawn. Do you remember those checks? A. I remember some of them—most of them.

Q. If Judge Cardozo's check book in the Mechanics' Bank were kept in the ordinary way, what explanation would that check book furnish of the purpose for which those checks were drawn? A. It would furnish a statement of the purpose for which they were paid.

Q. And where would that statement appear in Judge Cardozo's book? A. On the stub of the check.

Q. Would that stub, if kept in the ordinary way, show the name of the payee of the check and the amount of the check? A. It ought to, and probably would.

Q. If Mr. Nathan's check book were kept in the ordinary way—I mean his check book showing the deposits by him in the Mechanics' Banking Association—what information would that furnish as to his deposit in the Mechanics' Banking Association? A. It depends upon how he kept it; he might merely put the deposits as so much cash, or so much checks, and he might give the source from which the deposit came, but naturally he would put there the sources from which he received the money.

Q. To what extent, then, would the opportunity of an examination by you of the check book of Judge Cardozo, and also the check books of Mr. Nathan, enable you to determine whether any of these checks, to which your attention was called by Judge Fullerton, went to Mr. Nathan? A. I think I would be able to ascertain from such an examination.

Q. If the opportunity were given to you to examine the check books of Judge Cardozo and Mr. Nathan? A. I think so.

By Mr. FULLERTON:

Q. Whether any such thing were there or not? A. If kept in the ordinary way.

Q. Have you made any investigation of an entry on July 12th in Mr. Nathan's deposit account? A. Not sufficient to give an answer to that.

Q. You mean to say that, if you had access to these check books, if anything was written on the margin, you could tell what it was? A. I mean I suppose I could, if it was kept in the ordinary way.

Q. What do you mean by the ordinary way? A. The amount of the check and the name of the payee would be written on the margin, and the sources of the checks deposited.

Q. Do you know a great many who do not enter it in that way? A. I said it might not be kept so.

Q. Is it not an ordinary way for some people to keep their check books without keeping these particulars? A. It depends on the nature of the account. If it was a Bank account you would not make such entries.

Q. If it was not a Bank account? A. I would rather say you would enter the source from which the checks came.

By Mr. TILDEN:

Q. Is not that universal among business men to do so? A. It is, except among bankers.

By Mr. OWEN:

Q. Have you ever examined a lawyer's check book? A. I have not, specially; I have in some cases, but I do not know of any particular one.

Q. Have you ever examined any Judge's check books before? A. No, sir.

By Mr. PARSONS:

Q. You have not examined any Judge's check books now? A. No, sir, I have not.

JOHN SPARKS, recalled; examined by Mr. PARSONS:

Q. On your former attendance before the Committee you produced the recognizances filed in the Court of General Sessions during the year 1871, in the case of discharges on bail of prisoners committed at the Special Sessions. Have you been subpœned now to produce such recognizances for the year 1868, 1869, 1870? A. I have, sir.

Q. And have you produced such recognizances filed in the office of the Clerk of General Sessions for the years 1868, 1869 and 1870? A. I have—taken by Judges Barnard and Cardozo.

Q. Were you not subpœned to produce all such recognizances? A. Yes, sir, and I produce all.

Q. Are any filed in your office taken by other Judges—taken during those years 1868, 1869 and 1870? Yes, sir, by pretty much all of the Supreme Court Judges.

Q. Why did you not produce others? A. I have brought all that we have.

Q. Taken by any Supreme Court Judge during those years? A. Yes, sir; with the exception of one or two taken by Judge Clerke?

Q. Why did you not produce those? A. I did not know until after coming here and checking it off to-night; I found one or two were absent; they can be produced at any time?

Q. Where are they? A. They are, I suppose, in the office.

Q. Why were they not with the others? A. I did not know until after I got here and was checking them off that they were absent.

Q. Do you know what has become of those two? A. I think they are in the office.

Q. What is the explanation of the fact that they were not with the others which you have produced? A. I did not know until I checked them off to night that two were missing, and I recollect that they had been handled several times by other parties.

Q. You say that they have been handled by some one else? A. Yes, sir; several gentlemen in the office.

Q. By whom? A. By gentlemen coming there with subpœnas from your office.

Q. When? A. Yesterday, and when I came here before.

Q. By whom were the recognizances handled on which occasion the recognances taken by Judge Clerke were separated from the others? A. I cannot state positively now; they have been handled several times.

Q. Will you state what you know in reference to those recognizances? A. They have been left in the office, and several times there have been persons looking at them from your office.

Q. No person from my office has taken any of them out of the bundle? A. They became separated and I had to tie them up in the office, and some of them became separated, and I recollected after we came to check them off this evening that there were two missing.

Q. And before what Judge were those two taken? A. They were taken by Mr. Valentine.

Q. But I mean on the discharge of a prisoner—by what Judge? A. The recognizances taken by Judge Clerke—I made a memoranda of them.

Q. Do you mean that they were taken by Mr. Valentine from the bundle? A. They were loaned to him.

Q. When were they loaned to him? A. Two or three days ago.

Q. Was that on the occasion of any person examining the bundle? A. Yes, sir.

Q. Who was that? A. He came and asked me if certain recognizances were there.

Q. What Valentine is that? A. He is an officer of the Supreme Court.

Q. A man with whom you are acquainted? A. Yes, sir.

Q. What is his particular office in the Supreme Court? A. An officer in the Oyer and Terminer.

Q. Attached to what Judge, if you know? A. I do not know, sir.

Q. Do you mean that Mr. Valentine came and examined the bundle and took out these two recognizances which were taken by Judge Clerke, and which have been in the office? A. I lent them to him, and he promised to return them; whether he has or not, I do not know.

Q. Why did you, then, say in explanation in answer to my question, that gentlemen from my office had been there? A. They have been there several times.

Q. But had that anything to do with the absence of the two recognizances taken before Judge Clerke? A. I did not know; there have been others, probably; I did not recollect it until I got here to-night and examined them.

Q. Do the bundle of recognizances which you now produce and the two which you say you loaned to Mr. Valentine, taken before Judge Clerke, embrace all that were filed in the Court of General Sessions during the years 1868, 1869 and 1870? A. Decidedly.

Q. Do you mean all that were filed? A. All that I can find there.

Q. In whose custody are all these recognizances kept? A. In the custody of myself and Mr. Vandervoort.

Q. Have any been removed with the exception of these two? A. None, to my knowledge.

Q. Can you speak with confidence on that point? A. With great confidence and positiveness.

Q. Do you know Mr. David B. Ogden who has been aiding this investigation? A. I know Mr. Ogden.

Q. Have you shown to him and has he examined all the recognizances filed during the years 1868, 1889 and 1870, with the exception of the two loaned to Mr. Valentine? A. That is so, sir.

By Mr. FULLERTON:

Q. Who takes the recognizances when prisoners are admitted to bail by a Judge? A. They were generally taken by the Assistant District Attorney, by a gentleman acting as one of the assistants in the office.

Q. Who acted in that capacity during this time? A. Mr. Jerome.

Q. Who is now dead? A. Yes, sir; he died very recently.

Q. Neither you nor Mr. Vandervoort know anything about recognizances until they are brought there? A. Until they are filed with us; sometimes they were brought in by Mr. Jerome and sometimes by an officer of the Court.

Q. Have you known instances where recognizances have been taken which never reached the Clerk of the Sessions? A. I cannot state any particular instance.

Q. Have you never heard them inquired for, when they could not be found? A. There have been instances when recognizances have been taken; but I do not know that I can say positively in reference to these kind; it was where recognizances have been taken for other matters, when, several days before they were filed, inquiries would be made about them.

Q. And they would not be filed until the inquiries were made A. Until inquiries were made.

Q. And until the attention of the person in whose custody they were was called to it? A. Yes, sir.

Q. It does not follow that because recognizances are not found on the files in the Court of Sessions, that none were taken? A. Not necessarily.

By Mr. PARSONS.

Q. Did you ever know of an instance where, on the discharge of a prisoner committed at the Special Sessions, a recognizance was taken which was not filed at the office? A. No, sir.

Q. Were the cases to which you have referred, where the recognizances did not reach your office for several days, cases where the discharge was under other circumstances than a conviction by the Court of Special Sessions? A. Yes, sir; I cannot recollect any case where there was a discharge upon *certiorari* from Special Sessions, where inquiry was thus made; but only in regard to some bonds that were taken under other circumstances, in other cases.

By Mr. PRINCE:

Q. What is the greatest length of time that is comprised between the time the recognizance was taken, and the time of its being filed in your office? A. In other classes of cases?

Q. You have spoken of instances where recognizances were not filed for several days after they were taken. What is the longest time that you have known to elapse between the time they were taken, and the time when they were filed? A. Three or four days.

Q. And then not until they were inquired for? A. Until inquired for.

Q. Have you known of any cases where recognizances were

taken where they were never filed at all? A. I cannot at this moment recollect any instance.

Q. Would you know that they were not filed unless they were inquired for, and an investigation instituted? A. No, sir.

Q. Do you recollect of cases of recognizances being inquired for, and not filed thereafter? A. Yes, sir; I recollect that there have been instances where bonds have been taken, and parties came into the office and inquired for such a bond, hearing that the party was out on bail: we would look and not find it. They would say that the party was bailed, and we would report to the District Attorney, and he would send to the Judge who discharged.

Q. But in all these cases they were filed finally? A. Yes, sir.

By Mr. FULLERTON:

Q. Have you ever known an instance where the recognizance was not filed? A. I do not know of any.

Q. You cannot swear that in every instance they were filed when taken? A. No, sir.

Q. You do not know anything about the recognizances until they reach your hands? A. No, sir; except where parties would inquire for a certain bond, to know who was the surety, and upon searching our papers we would not find it, and we would report the fact to the District Attorney, and he would institute inquiries.

Q. Mr. Jerome had the charge of this business? A. Yes, sir.

Q. That makes it necessary for me to ask this question: was he not an intemperate man? A. Yes, sir.

Q. Very much so? A. Yes, sir.

By Mr. NILES:

Q. Was he in the habit of being under the influence of liquor before ten o'clock in the morning? A. I have seen him so occasionally.

Q. How many times? A. In the latter portion of his life it was frequent.

By Mr. PRINCE:

Q. Would that interfere with the discharge of his duties? Did you find considerable disarrangement of matters under his charge on account of that? A. I am not prepared to say that I discovered any myself.

Q. Were such disarrangements of matters under his charge found? A. Yes; it has been spoken of in the District Attorney's office.

Q. What do you mean by the latter part of his life? Since when has he been in the habit of being under the influence of

liquor before ten o'clock in the morning, so as to be incapable of doing business? A. I would not say incapable of doing business, but I have seen him myself when he was quite under the influence of liquor.

Q. How far back? A. Just after the holidays—last Christmas and New Year's; he was quite a young man, only about 25, when he died.

By Mr. PARSONS:

Q. When did Mr. Jerome take charge of this business for the District Attorney? A. He had been there, I should say, two years or so, up to the time of his death.

Q. Did he begin some time during the year 1870? A. I think it was 1871 principally.

Q. How did you discover that Mr. Jerome was under the influence of liquor? A. By his manner. It was very apparent to any one.

Q. Was he in a condition, on such occasions, suitable to represent the District Attorney on a Habeas Corpus proceeding in the Supreme Court? A. I can hardly answer that.

Q. Did his manner on such occasions clearly indicate that he was under the influence of liquor? A. It would, to those who knew him; probably to those that did not know him it might not.

Q. Do you mean to say those that were in the habit of seeing him? A. Yes, those that were accustomed to see him.

By Mr. NILES:

Q. When in that condition, was the District Attorney in the habit of sending him to Court? A. No, sir; I do not think the District Attorney was aware of it; when he did become aware of it Mr. Jerome was requested to absent himself from the office, and for several months he did.

DAVID B. OGDEN, recalled; examined by Mr. PARSONS:

Q. Have you, at the request of the Committee of the Bar Association, made an examination of writs of Habeas Corpus in cases where prisoners were discharged by Judges of the Supreme Court, during the years 1868, 1869, 1870, 1871; and also the recognizances filed in the office of the Clerk of the General Sessions during the corresponding years? A. I have, sir.

Q. Do you know Mr. John Sparks, the Deputy Clerk of the General Sessions? A. Yes, sir.

Q. Did he produce to you the recognizances filed in the office of the Clerk of that Court? A. Yes, sir.

Q. And are the recognizances which have been so produced to you this evening, now present? A. Yes, sir, a similar bundle.

Q. Are there any cases where discharges were made of prisoners produced upon Habeas Corpus by Judges Brady, Ingra-

ham and Clerke during the years 1868, 1869, 1870, 1871? A You mean discharges absolutely, or on bail?

Q. I mean discharged absolutely or on bail? A. Yes, sir.

Q State, if you please. how many there were discharged, either absolutely or on bail, according to the order endorsed on the writ, made by Judge Brady during those four years? A. I found three discharged on bail.

Q. In each case on bail? A. Yes, sir.

Q. Do you, in each of such cases, find a corresponding recognizance filed in the Court of General Sessions. A. Yes, sir.

Q. In what year were those discharges made by Judge Brady? A. I cannot answer you from memoranda that I have here.

Q. Do you know more than the fact that the discharges were during those four years, 1868, 1869, 1870, 1871? A. No, sir.

(It is admitted that Judge Brady took his seat as Judge of the Supreme Court on January 1st, 1870, and only sat as Judge of the Supreme Court during two of the four years inquired of.)

Q. How many of such discharges did you find, either absolutely or on bail, made by Judge Ingraham during those four years?

A. I found two; both absolutely.

Q. And in such cases did you find a corresponding recognizance? A. No, sir; in neither case.

Q. Will you name the prisoners discharged by Judge Ingraham? A. I am not sure whether I can; I have a reference to the number of writs; I think, in 1868, Numbers 3 and 53; I am not sure about the numbers.

Q. Examine the discharge in the case of Joseph E. Lynn, No. 3, 1868; and of Alexander Ridge, No. 53, 1868, and state whether they are the two writs upon which the discharge was made by Judge Ingraham? A. I believe these to be the two writs.

By Mr. PARSONS:

I wish the Committee to take a note of the fact that in the case of Joseph E. Lynn, No. 3, the endorsment is "the prisoner is entitled to the discharge under the decision, D. P. I.," and upon the other side of the writ "prisoner discharged January 20th, 1868, Albert Cardozo, J. S. C.," in Judge Cardozo's handwriting. And in the other case, No. 53, of A. Ridge, the endorsement is "District Attorney consents to the discharge of the prisoner on the ground that the term of service has already expired, R. C. Hutchins, October 17, 1868," in the handwriting of the then Assistant District Attorney; also endorsed "on consent of the District Attorney, the within named Alexander Ridge is hereby discharged, the period of his imprisonment having expired October 17, 1868, D. P. Ingraham, J. S. C.," the signature alone being in the handwriting of Judge Ingraham.

Q. How many discharges did you find granted by Judge

Clerke during those four years? A. I found three, sir; one absolutely and two on bail.

Q. In the case of the two on bail, did you find corresponding recognizances filed in the Court of General Sessions? A. I did not; I called on the Clerk of the Court and he informed me that the recognizances were there on file in his office, with the exception of two which had been removed from his office, and he gave me the names of those two, which I have since verified outside, and found that these were the two recognizances taken by Judge Clerke in the cases of John Hughes and James Gorden in May 1869. I think number 25 and the following number.

Q. What was the case in which Judge Clerke made an absolute discharge without anything on the writ to indicate that it was upon bail? A. I think number 27 of 1869. The numbers of these cases I am not quite sure about, as I put them down merely for my own convenience. By reference to a memorandum I find the writ referred to as the case of a prisoner discharged absolutely by Judge Clerke was one where he was discharged on bail, namely, the case of John or James Green, No. 27.

Q. Was there any discharge made by Judge Clerke except on bail? A. No, sir.

Q. Only in these cases you found a corresponding recognizance filed in the Court of Sessions? A. The Clerk of the Court told me that they were there on file until a short time ago, when they were taken off the file.

Q. Have you noticed that in case of discharges made by Judges Cardozo and Barnard in some cases the discharge states that it is upon bail, and in other cases there is no such statement? A. Yes, sir.

Q. In the case of prisoners discharged, with no statement that bail was taken endorsed upon the writ, do you find in any case a recognizance filed in the office of the Clerk of the Court of General Sessions. A. No, sir.

Q. What do you find in the cases where the endorsements upon the writ of Habeas Corpus state that the prisoner was discharged upon bail? A. I find, I think, with three exceptions, that the bail bond is on file in the office of the Clerk of the Court of General Sessions.

Q. Answer as to the year 1871? A. It is so uniformly in that year.

Q. As to the year 1870? A. It is so uniformly in that year.

Q. Answer as to the year 1869? A. It is so with two exceptions; I will correct the statement that I made as to 1871. It is so with the exception of the case of Nelly White, which is writ No. 27 of 1871. There is no bond filed there. In that case the endorsement is, "Prisoner bailed, District Attorney having approved the bond April 10th, 1871, A. C., J. S. C."

Q. Is this the fact with reference to the year 1868, that where the writ shows that the prisoner was discharged upon bail, you

find a corresponding recognizance filed in the office of the Court of General Sessions? A. I do find it with one exception.

Q. And by what Judge was that exceptional case discharged? A. By Judge Cardozo.

Q. What is the name of the prisoner? A. Henry R. Ellis, writ No. 46.

Q. Did you look specially to see whether there was any recognizance filed in the case of Adelaide Beaumont, discharged in the year 1871, and did you find any recognizance on file. A. I made a similar examination as in the case of others and I found no such recognizances.

By Mr. FULLERTON:

Q. You made out the list of references which were made by Judge Cardozo? A. Yes, sir.

Q. And that list was produced here, on the part of the prosecution, by you and put in evidence. A. The list was handed in; it was a summary of the number of references; I do not know whether it was put in evidence or not.

(It is conceded that the copy of the letter of Mr. Osborne, produced by Mr. Field, shall be received in evidence and copies of the two letters attached, marked Exhibit F. 2.)

DUDLEY FIELD, sworn; examined by Mr. STICKNEY:

Q. You are a member of the firm of Field & Shearman? A. Yes, sir.

Q. And your firm were counsel for certain parties during the Albany and Susquehanna litigation? A. For a number of the Directors of that road.

Q. For what ones? A. I cannot tell you without examining all the suits carefully.

Q. Were you counsel for James Fisk, Jr.? A. Yes, sir.

Q. For Jay Gould? A. Yes, sir.

Q. For David Wilbur? A. Yes, sir.

Q. For Jacob Leonard? A. Yes, sir.

Q. For Samuel North? A. I don't remember about him.

Q. Samuel North was one of what is called the Church Board of Directors, was he not? A. I don't know.

Q. Were you counsel for Azro Chase? A. Yes, sir.

Q. For Alonzo Everts? Yes, sir.

Q. For Charles Courter? A. Yes, sir.

Q. And Jonathan R. Herrick? A. Yes, sir.

Q. What part of the time, between the 25th of July, 1869, and the 8th of September, 1869, were you in New York city, as near as you can state? A. I cannot now remember; I know that at the commencement of the Albany and Susquehanna litigation, I was in Portsmouth, New Hampshire, and I then went to Swamp-

scott, and was telegraphed for by Mr. Sterling, and came here; but the day of my arrival I cannot fix.

Q. You have been told, I suppose, that the order for the Receivership of the Railroad, appointing Fisk and Courter as Receivers, was granted on Friday, the 6th of August? A. I don't know that I have been told anything about it; I know I was not here when it was granted.

Q. Have you the order itself here? A. No.

Q. Do you remember how soon after the 6th of August, 1869, you reached New York city? A. I do not; but I think within a fortnight.

Q. Not within a week? A. I don't think within a week.

Q. Do you remember the motion for attachments to the Sheriff of Albany county, from Ramsey, and Pruyn, and some other parties, which were before the Supreme Court of New York city, on the 12th and 14th of August? A. No; I have no present recollection of them.

Q. Can you state, on reflection, whether you were present in New York city at that time? A. I cannot.

Q. Or whether you were in Court when those proceedings were had? A. I can not.

Q. Did you have anything to do with obtaining the order for the appointment of Fisk and Courter as Receivers? A. No; I have already stated I was in New Hampshire at that time.

Q. You were in New York on the 4th of September, 1869, were you not? A. I cannot remember so long ago the dates that I was here; I think very likely.

Q. (Handing affidavit to witness.) You were in New York on the 6th of September, when you swore to that affidavit, were you not? A. Undoubtedly.

Q. And that was Monday, the day before the election for Directors of the Company, was it not? A. I don't know whether it was or not.

Q. Can you remember how long you were in New York before that time? A. No.

Q. (Handing paper to witness.) Will you look at the paper now shown you, and state whether that is the original complaint in a suit wherein your firm were plaintiff's attorneys? A. I presume so. It is in the handwriting of Mr. Sterling, one of my partners.

Mr. STICKNEY:

We offer that in evidence. It is the complaint in the suit of David Wilbur against W. L. M. Phelps, *et al.* (Paper marked, "Charge 2, A.")

Q. Have you a copy of that complaint which you would be willing to leave with the Committee? A. No.

Q. Have you the injunction which was granted in the Wil-

bur suit, on the 4th day of August, 1869? A. Yes, sir.

MR. STICKNEY:

I will take this course, if the Committee please. I have a copy of the case on appeal, which I can leave with the Committee for any reasonable time.

MR. TILDEN:

Let this particular copy be marked as an Exhibit, and that will answer all purposes.

Q. (Handing book to witness.) The book now shown you is what? A. It is the case on appeal, or one volume of the case on appeal, in the suit of the People *vs.* The Albany and Susquehanna R. R. Co.

Q. Prepared and printed by your firm? A. I think so.

Q. Have you any doubt of it? A. I think Mr. Shearman prepared that. That is my recollection of it.

Q. It was procured to be printed by your firm? A. That is my belief. I had nothing to do with it. Those suits were suits that I had very little to do with from beginning to end.

Q. This copy now shown you, you produce from your office? A. I presume it is.

Q. The one you now hold in your hand, is a copy, so far as you can see, of the one I have produced before you? A. They are not copies one of the other, but they are substantially the same thing, I presume. One was printed in 1870, and the other in 1871. They have an entirely different title page.

By MR. NILES:

Q. The question he asks you is whether the copy he now produced, is a copy printed under the directions of your firm? A. I have no doubt of it.

[Book marked for identification. Mr. Stickney read the injunction in the case of David Wilbur *vs.* The Albany and Susquehanna R. R. Co., and others.]

MR. STICKNEY:

We offer the order in evidence.

Q. (Handing paper to witness.) Is that a summons and complaint from your office, in which your firm were plaintiff's attorneys? A. Yes, sir.

MR. STICKNEY:

We offer this complaint in evidence in the suit of David Wilbur *vs.* W. L. M. Phelps *et als.*

Q. Have you the injunction order in that suit? A. Yes, sir; there it is. [Witness produces the injunction.]

MR. STICKNEY:

We offer this order in evidence, which the Committee will find printed.

[MR. STICKNEY read in evidence the injunction order in the case of David Wilbur *vs.* W. L. M. Phelps, *et al.*]

Q. That is Judge Barnard's signature, is it not? A. I believe it to be. It looks like his. I am no judge of handwriting.

[Paper marked "Charge 2 B." Summons and complaint in the suit of David Wilbur *vs.* The Albany and Susquehanna R. R. Co., marked "Charge 2 C."]

[Injunction order in the suit of David Wilbur *vs.* The Albany and Susquehanna R. R. Co. "Charge 2 D."]

[It is agreed between the parties, that all papers appearing in the printed book may be read by either party, and it is also agreed that all the papers therein appearing, purporting to be signed by Judge Barnard are correct copies of the original papers signed by him. Books marked "Ex. Charge 2, L. B. P., March 7th, 1872.]

Q. (Handing prper to witness.) Look at the paper now shown you, and state whether that is the original complaint in the suit of Azro Chase *vs.* The Albany and Susquehanna R. R. Co., and others, wherein your firm were plaintiff's attorneys? A. I don't know, but I have no doubt it is. It purports to be an original, and I am not sure that it is not.

MR. STICKNEY:

I will offer this complaint in evidence. [Complaint marked "Charge 2 E."

Q. In whose handwriting is the body of that complaint? A. I don't know it.

Q. You have examined it carefully? A. Yes, sir.

Q. Who is Edward M. Ensign, the Notary before whom the verification of the complaint is made? A. He was then managing clerk in our office.

Q. Will you look at the endorsement on the outside—"August 6th, 1869, G. G. B."? In whose handwriting are those words? A. I don't know, but "G. G. B." looks like Judge Barnard's handwriting.

Mr. STICKNEY:

We will put in evidence the endorsement on the outside of the original complaint—"August 6th, 1869, G. G. B."—the initials "G. G. B." being admitted to be Judge Barnard's handwriting.

Mr. ANDREWS:

Yes.

Mr. STICKNEY:

We next offer in evidence the affidavit of David Wilbour and others, in the same suit of Azro Chase *v.* The Albany and Susquehanna Railroad Company.

Q. (Handing affidavit to witness.) That is the affidavit, is it not? A. Yes, sir; it appears to be the original.

Mr. STICKNEY:

We offer that in evidence.

(Affidavit in the suit of Azro Chase *v.* The Albany and Susquehanna Railroad Company. Marked "Charge 2 F.")

Mr. STICKNEY:

The affidavit now produced is from the County Clerk's office.

Q. (Handing affidavit to witness.) Do you know in whose handwriting the body of that affidavit is? A. Yes, sir; it is the handwriting of Thomas G. Shearman, one of my partners.

Q. You were subpœnaed to produce the original order appointing James Fisk, Jr., and Charles Courter, Receivers in the suit of Azro Chase *v.* The Albany and Susquehanna Railroad Company. Have you that order? A. No, sir.

Q. Have you ever seen that order? A. Yes, sir.

Q. When did you last see it? A. Something like six months ago, I think.

Q. Where? A. At my father's library.

Q. Do you know where it now is? A. It, as I believe, remains in my father's possession.

Q. We shall have to have that. If. Mr. Field, you will undertake to produce that, we will not subpœna your father.

Mr. DUDLEY FIELD:

No; I have no control over that.

Q. That was an order obtained by your firm, was it not? A. I have no doubt that it was, but you must not ask me to speak about what occurred when I was absent.

Q. It is an order in this suit? A. I don't know.

Q. You have seen it? A. I have seen it, but I don't remember its contents; I presume it is in this suit.

Q. Is your father a member of your firm? A. He is a partner; he is not a member of our attorney's firm.

Mr. STICKNEY:

Mr. Chairman, we shall require that order.

Q. Will you produce that paper? A. I have not got it under my control.

Q. On being subpœnaed to produce that paper, will you produce it? A. I have answered that already by saying I have not got it under my control.

Mr. STICKNEY:

The next paper we offer in evidence is from the files in the County Clerk's office, and it is the bond in the suit of Azro Chase *v.* The Albany and Susquehanna Railroad Company. (Marked "Charge 2 G.")

Q. (Handing paper to witness.) Look at the bond in the suit now shown you, and state in whose handwriting is the body of that bond? A. I am confident it is in Mr. Sterling's handwriting, one of my partners.

Q. In the body of the bond are two names—Charles Courter and James Fisk, Jr. In whose handwriting are they? A. They look like Thomas G. Shearman's.

Q. Charles Courter and Jacob Leonard, two of the sureties, you have already stated, I believe, were clients of yours in this litigation? A. Yes, sir.

Mr. STICKNEY:

We read, also, the endorsement, "Approved August 6th, 1869," signed, "G. G. Barnard," both in Judge Barnard's handwriting.

Mr. ANDREWS:

The signature is; I didn't look at the other. Yes, they are both in Judge Barnard's handwriting.

Mr. STICKNEY:

And further, "Filed August 7th, 1869." The next paper we offer is from the files of the Supreme Court, and is the supplemental complaint in the suit of Azro Chase, *v.* the Albany and Susquehanna R. R. Co., and others. (Marked "Charge 2, H.")

Q. In whose handwriting are the first two pages? A. I don't know.

Q. Is it not the handwriting of any clerk in your office, or one who was a clerk at that time? A. Not to my recollection.

Q. The later portions of the complaint, beginning with the prayer for judgment, are in whose handwriting? A. Mr. Molloy's, one of my clerks.

Q. Is he still in your employ? A. Yes, sir.

Q. The verification is in whose handwriting, the body of it? A. I don't know him.

Q. Mortimer Smith, the notary, before whom the verification is sworn to, is an officer of the Erie R. R. Co., is he not? A. He is in their employment; I don't know that he is an officer. I don't know the precise position that he does hold.

Q. You don't know? A. I say he is in their employment, but I don't know that he holds an official position.

Mr. STICKNEY:

We wish noted particularly, on this last paper, the en-

dorsement: "Filed, August 7th, 1869, G. G. B.," the initials "G. G. B." being Judge Barnard's handwriting.

Mr. ANDREWS:

Yes.

Mr. STICKNEY:

And the endorsement in the ordinary form underneath; "Filed August 7th, 1869." [Marked, "Charge 2, I."]

Mr. STICKNEY:

We then produce the undertaking on injunction in the same suit of Azro Chase, from the files of the County Clerk's Office.

Mr. ANDREWS:

The signature is admitted.

Mr. STICKNEY:

We read the endorsement: "Filed, August 7th, 1869, approved August 7th. 1869. George G. Barnard, J. S. C." That being admitted to be the signature of Judge Barnard.

Q. Do you know who B. W. Blanchard is, a man that is one of the sureties on that bond? A. Yes, sir, I know him very well.

Q. Who is he? A. That is more than I can tell you.

Q. What is his business? A. I don't know.

Q. You have seen him at the Erie Railway office? A. Yes, sir.

Q. Very often? A. I cannot say that. I think I have seen him more often at my own office.

Q. Has he any position in the employment of the Erie Railway Company. A. I am not sure; my impression is that he is in the employ of the Narragansett Steamship Company, but I really don't know.

Mr. TILDEN:

Q. General freight agent he is? A. I don't know, Mr. Tilden, I don't really propose to state what I don't know.

By Mr. STICKNEY:

Q. What was Mr. Fisk's connection with the Narragansett Steamship Company? A. That I don't know, except I believe he was general agent, and held some official position in the Company, but what, I really don't know.

Mr. STICKNEY:

We will put in evidence the undertaking on the injunction in the suit of David Wilbur *v.* the Albany and Susquehanna R. R. Co., [Marked, "Charge 2, K."]

Mr. STICKNEY:

The name of Judge Barnard appearing on the outside of it being admitted to be Judge Barnard's signature. We next put in evidence the undertaking on the injunction in the suit of David Wilbour *v.* Phelps and other, produced from the files of the County Clerk's office, the name of Judge Barnard appearing on the outside being admitted to be his sighature. [Marked, "Charge 2, L.]

Q. What was the condition of the Albany and Susquehanna litigation when you first reached New York? A. My impression is that when I got here, the Governor had taken military possession of the road.

Q. How soon after that was it you reached New York? A. That I can't remember.

Q. Was it more, or less, than one week, as nearly as you can recollect? A. I can't recollect.

Q. Are you certain that the Governor had taken possession of the road, or that you were so informed when you reached New York? A. No.

Q. How long before you made the affidavit, on the 6th of September, which has been shown to you, were you in New York city? A. I can't remember those dates precisely.

Q. Did you have any connection with the drafting of the papers, or obtaining the order appointing a Receiver, in the suit of Bush *v.* The Albany and Susquehanna R. R. Co. A. Not that I remember; if I saw the paper I might be able to tell.

Q. What is the first thing you do remember doing? A. I have very little recollection about it; I had very little to do with those suits, any of them, from the first stage to the last; what I did was merely incidental.

Q. (Handing paper to witness)—Can you remember whether you had anything to do with drawing that paper? A. I cannot.

The CHAIRMAN:

What is that paper?

Mr. STICKNEY:

It is an order in the suit of Joseph Bush *v.* The Albany and Susquehanna R. R. Co.

Q. Who did have the principal management of this litigation on the part of your office? A. Thomas G. Shearman.

Q. Can you remember whether you were told, when you first reached New York, that the order appointing Mr. Fuller Receiver of certain stock, had been granted? A. No, sir.

Q. Have you any recollection whatever as to what you first did in this litigation yourself? A. No, sir.

Q. Have you any recollection of anything you did in this litigation? A. Yes, sir; I remember drawing the papers—drafting

the papers in the suit against Smith, Ramsey & Pruyn, and I think Phelps, for stealing the books of the corporation?

Q. Is that the first thing that you remember? A. The first thing that I remember, and I think the first thing that I did.

By MR. TILDEN:

Q. What did you say was the first thing you recollected doing? A. Drawing a complaint in an action against those people for purloining or converting, what I call stealing, those bonds; it is a legal term, and it is more delicate, perhaps, but the other one is a more appropriate one, in my opinion.

Q. When did you first have any conversation with any person about the beginning of that suit? A. A few days previous to that.

Q. How many days previous? A. I can't tell you exactly; not long.

Q. Can you give any idea how many days? A. No, sir.

Q. None at all? A. No, sir.

Q. With whom did you converse in relation to bringing that suit? A. My impression is Mr. Shearman and my father were the only persons I conversed with.

Q. Was it a week before the suit was brought when you had the first conversation with Mr. Shearman with regard to it? A. I can't tell you; I don't think it was.

Q. Was it a week before the suit was brought when you had the first conversation with your father in regard to it? A. I can't tell you; I presume it was not.

Q. Have you been told by Mr. Shearman, or by your father or by Mr. Sterling, that the defendants in that suit, Mr. Smith and Mr. Ramsey, Mr. Pruyn and Mr. Phelps, were arrested nearly at the hour of the election for Directors, on the 7th of September, 1869? A. No, sir.

Q. Have you been told by any one that such was the fact? A. Oh, yes; I have seen it in evidence, over and over again.

Q. Had you any conversation with your father in regard to having those gentlemen, defendants, arrested at that time? A. I had conversation about this matter of arresting, but never one word or one intimation on the part of anybody in my hearing, or to my knowledge, that there was any one time or another to be selected. We waited until we could get the authority of the Executive Committee to bring the action. We got the order of arrest as soon after it as we could. We sent the order to Albany as soon after that as we could, and the whole theory that there was any idea of arresting any one at this meeting is a simple invention of liars. That is what it is.

Q. Did you have any conversation with Mr. Shearman in relation to having those gentlemen arrested at that time? A. No, sir.

Q. Will you give any explanation that you can as to the way

it happened? A. I cannot give an explanation of a thing that happened 150 miles away from me.

Q. As to the way it happened that those gentlemen were arrested just at the hour of that election? A. I have already stated we brought that action as soon as we could after first discussing it and getting permission from the Executive Committee to do so; that we got, or procured to be got, the order of arrest as soon after it as we possibly could; that we sent the papers to Albany as soon after that as we could, and when they reached Albany or left the city I knew no more, personally, about it.

Q. You had delayed to bring your suit until you got your authority? A. Yes, sir.

Q. How long had you delayed it? A. I think three or four days, long enough to write to Albany and wait until a majority of the Executive Committee could be got together, and until the written authority could be sent to us.

Q. How long before the 7th of September were those papers prepared on which the order of arrest was obtained? A. My recollection is, the papers were prepared the very day that we got the authority, and that the order of arrest was obtained that day or that night, which, I think, was a Saturday, and that they were sent up Saturday night to Albany. That is my impression, but I am not sure. I know we didn't delay much.

Q. How early could those papers have been prepared in your office? A. It depends on the brains of the man who prepares them. I can do some things quicker than some people, and some things slower than other people.

Q. Will you answer my question? A. I have answered that question.

Mr. STICKNEY:

I offer in evidence, from the files of County Clerk's office, the original summons and complaint and affidavits in the suit of the Albany and Susquehanna Railroad Company *v.* James H. Ramsay and others, the original order of arrest, with Judge Barnard's signature.

Mr. ANDREWS:

The signature is the Judge's.

Mr. STICKNEY:

The original order of arrest, with the return of the Sheriff and copies of the undertakings given by the defendants.

Q. (Handing papers to witness). Look at those papers which I have just mentioned, and state whether all the papers except the complaint, your own affidavit sworn to September 6th, 1869, and the copy of Martin D. Conway's affidavit, sworn September 2d, 1869—state whether all the rest of the papers are not printed? A. No, I shall not answer it. He might as well ask

me if there is a window there. I don't choose to answer whether it is in print or not.

The CHAIRMAN:

The document itself cannot be partly written and partly printed in the book.

WITNESS:

If it facilitates you, I will answer it, but it is a style of examination I don't like. Yes, they appear to be.

Q. Now, will you state how early those were printed? A. I don't know.

Q. Were they not printed before the 2d of September? A. I don't know that. (Marked "Charge 2 M.")

Q. [Handing papers to witness.] Will you look at those printed papers which were used on the application for the order of arrest in the suit of the Albany and Susquehanna Railroad Company *v.* Ramsey and also at the printed papers now shown you in the suit of Charles Bush, *v.* the Albany and Susquehanna Railroad Company, and see if all the printed papers which were used on the application for the order of arrest are not the same as a portion of those others in the Bush suit? A. That would require a very extended examination, which I decline to make. I don't propose to compare papers to oblige counsel.

Mr. STICKNEY:

It is merely to show how early you had those papers printed. Here they are, with the original affidavit attached to them, dated the 2d of September. That is what we want to show.

WITNESS:

Why don't it show it?

Mr. ANDREWS:

I suggest they put in all their papers and they can be compared afterwards.

THE CHAIRMAN:

You had better leave that to be compared by some one else. It would occupy some little time.

Q. [Handing affidavit to witness.] Will you look at the affidavit of Martin D. Conway, now shown you. After looking at that and the papers annexed to it, can you state whether or not the printed papers in the arrest suit were not prepared in your office as early as the 2d of September, 1869? A. No, I cannot, without making the comparison and after I made the comparison, I could not then tell, for I don't know Conway's signa-

ture, nor do I know the signature of the Notary that signed these papers. It would not help me a particle.

By the CHAIRMAN:

Q. If this affidavit was made at the time it purports to be sworn to, and if the contents of this paper document are similar to the contents of the printed document in the other case, would that be satifactory to your mind, that the printed portion of that document was printed before the 2d day or on the 2d day of September, 1869? A. Certainly.

Mr. STICKNEY:

Then, Mr. Chairman, we will have to ask you to mark those papers for identification.

By Mr. STICKNEY:

Q. Did you draw that complaint yourself, in the case of the Albany and Susquehanna Railroad Company *v.* Ramsey and others, in the arrest suit? A. Yes, sir; I drew the draft of the complaint. Whether it was altered afterwards by any one, I don't remember, but I have seen the draft to-day in my own handwriting, when I was getting up these papers for you.

Q. When did you write to Albany for your authority to bring the suit? A. My impression is, we were either told by Mr. Hamilton Harris, or I wrote to Mr. Hamilton Harris, and I think we wrote some four or five times, before the suit was brought, and perhaps a week, but I think not so long, but I can't be accurate as to the date.

Q. You received a letter from Mr. Harris, did you not? A. I don't remember receiving a letter. I received the authorization and I think it was accompanied by a letter from him.

Q. Have you a press copy of your own letter, if you wrote one? A. I can not tell that.

Q. Is it your habit to keep press copies of letters written on the business of your firm? A. Yes, sir.

Q. Will you produce a press copy, or a copy of it, without the service of a subpœna? A. If the Committee determine I must come here again, I will produce anything, if I have notice beforehand.

Q. If you produce it you need not come here? A. I will send it here with pleasure if I have it.

Q. You were subpænaed to produce a letter from Mr. Harris which was received by you on or about the 4th of September 1868. A. Yes, sir.

Q. Have you that letter? A. I have looked for it and am convinced, whosesoever letter it was that accompanied the authorization, it is in my father's possession. The authorization itself is in his possession at his house.

Q. Have you copies of those? A. No, sir, not to my knowledge.

Q. Do you remember on what day you received the authorization? A. I think the day before we brought the suit.

Q. Do you remember on what day that was? A. I am not sure. My recollection is, that we got it on Tuesday, brought the suit on Saturday and the papers were sent up on Saturday or Monday, but I am not positive about it, or perhaps Saturday night.

Q. Did you know when the election was to take place? A. Yes.

Q. Was it on Tuesday, the 7th of September? A. That I don't know. It was either Monday or Tuesday. I am confident.

Q. Can you not state which? A. No.

Q. Can you state the day of the month on which it was to take place? A. No, I was not there.

Q. [Handing paper to witness]. Will you look at this paper and see if it is a copy of what you call your authority to bring that suit? A. I don't know; I cannot tell without comparing it.

Q. Will you look at that paper and see if that is your signature to that affidavit? A. Yes, sir.

Q. Now, have you any doubt that that is what you call a copy of your authority to bring that suit? A. When I read the affidavit I will find out. I have no doubt that is a copy. I presume I directed one of my clerks to annex it.

Q. This whole paper is your affidavit, with a copy of the resolution annexed to it? A. It appears to be my affidavit; it is my signature to it.

Q. You have no doubt? A. No doubt. (Affidavit in the arrest suit, marked "Charge, 2 N.")

Q. (Handing paper to witness.) Look at that, and see whether you can now state on what day Mr. Harris' letter to you was dated? A. I see by this that I gave them a copy of a letter dated the 3d of September.

Q. Was that the letter which enclosed or accompanied this resolution, giving you the authority that you mention? A. I presume so.

Q. When did you receive the letter dated the 3d of September? A. I don't recollect, but I think the 4th or 5th; I know there was some delay about it; the 4th must have been Saturday.

Q. Do you remember which day of the week the 4th was? A. I don't, but I think it must have been Saturday.

Q. Do you know when the order of arrest in the arrest case was served? A. No.

Q. Did you direct any one to apply for that order of arrest? A. No.

Q. Do you know who did apply for that order of arrest? A. Yes, sir; I know by hearsay.

Q. Who was it? A. William H. Morgan.

Q. Of what firm? A. No; you put a question I cannot answer. He did it, or some one belonging to the firm of Lowe, Clarke & Morgan; and I think he didn't at that time, and does not now, but he has at some time. He had nothing to do with our firm at that time. He was a clerk of ours, brought up in our office.

Q. Did you give him any directions about applying for the order? A. No.

Q. Did you see the order of arrest after it was obtained? A. I don't think I ever saw it in my life.

Q. Did you give any directions as to when it should be sent to Albany? A. No, except I knew Mr. Morgan was going, but I didn't give him any personal directions about it. Some one told him to bring it along with him; at least I was told some one told him to bring it along with him.

Q. Do you know when it went to Albany? No.

Q. What is your opinion on that subject? A. I think Sunday night or Monday; that is my impression, but I don't know. I didn't see him go.

Q. Did you know that Henry Smith was the counsel for the Ramsay party in this litigation? A. Yes, sir; I knew he testified he didn't know where those books were, and it appeared they were hidden in his office at the time.

Q. Did I ask that question? A. No, but I answered your question.

Q. Did you know Mr. Ramsey was the President of that Company? A. I did.

Q. And a stockholder? A. I don't know how much of a stockholder he was.

Q. A director? A. I didn't know he was a director; I knew he was President; he may have been director, also.

Q. Did you know that Mr. Phelps was the Secretary of the Company? A. Yes, sir.

Q. Had you any reason to suppose that on the day of election they would be busily occupied in connection with the election? A. I didn't reflect on that subject.

Q. Had you any reason to suppose so? A. I didn't suppose anything about it.

Mr. STICKNEY:

That does not answer my question.

Mr. ANDREWS:

I object to the question. I suggest that it is not a proper question.

The CHAIRMAN:

I don't think that is material. They being officers of the Company, every one knows how they are engaged on election day.

WITNESS:

I had no reason to suppose anything about it, and didn't give it a thought.

Q. Did you know, or suppose there was to be a contest between the Ramsey party and what was afterwards called the Church or the Fisk Board of Directors.

Mr. NILES:

My notion of this is, that you should ask him if he had any knowledge or information on the subject of an expected contest.

Q. Had you any knowledge or information that there was to be a contest? A. Yes.

Q. Between what parties? A. Between those we represented, who, as I understand, had a large majority of the stock, and those whom Mr. Ramsey and these other people represented.

Q. In which suit was the injunction enjoining the inspectors obtained? A. I have forgotten the name.

Q. Have you any papers in the suit of Everts *vs.* the Albany & Susquehanna R. R. C.? A. None here, except they are printed in that printed book.

Q. Have you the injunction, or a copy of the injunction in the suit of Everts *vs.* the Albany & Susquehanna R. R. Co.? A. I have no copies of anything except what appears in these books.

Q. That is not in the book? A. Then I have not got it here.

Q. Will you send to the Committee, without being subpœnaed, a copy of that injunction, and of the complaint? We wish also the order appointing the Receivers. A. I will if you designate.

Q. It is the suit of Everts *vs.* the Albany & Susquehanna R. R. Co.—the injunction order and the complaint? A. What Receivers?

Q. Fisk & Courter? A. I told you I should not produce it; I told you I had no custody of it.

Q. Do you know that the injunction in the suit of Everts enjoined the inspectors who had been appointed the year before from acting as inspectors at the election on the 7th of September, 1869? A. I can't remember; I know there was an injunction of that kind obtained in one of the suits.

Q. Did you hear your father say anything as to when that injunction was to be used? A. No.

Q. Did you hear Mr. Sheaman say anything as to when that injunction was to be served, or used? A. No.

By Mr. ANDREWS:

I suggest this is not a proper question.

By the CHAIRMAN:

We want to get all the information we can.

Q. Had you any information, from any one, as to when that injunction was to be served or used? A. No, not that I remember.

By Mr. PARSONS:

Q. Will you produce the paper in your father's possession, or shall we compel him to bring them here? A. I shall not produce any papers in my father's possession.

By Mr. STICKNEY:

Q. Has Mr. Sterling been at your office to-day? A. No.

Q. Was he at your office yesterday? A. Yes.

Q. How late? A. Six o'clock nearly. We rode up together in a carriage. He was ill and is detained home to-day by the doctor's orders, as I am informed. He has been unwell for a week. You will find him at his residence.

Q. Where is Mr. Shearman, your other partner. A. I believe he is in Albany.

Q. When did he go there? A. I don't know.

Q. When did you last see him at your office? A. I think within a fortnight; I don't remember to have seen him within a less time than that.

Q. When did you first see him in the city? A. I don't remember to have seen him in the city within a fortnight.

Q. Will you state positively you have not seen him in the city since last Saturday night? A. No, I won't say positively, but I don't think I have.

Q. Do you not remember distinctly whether or not you have seen him in New York since last Saturday night? A. I know I have not seen him since he testified before this Committee, whenever that was, if that it what you are driving at.

Q. You have not seen him at all since he testified? A. I have not.

Q. Do you not know when he is expected from Albany? A. I do not,

Q. Have you no information on that point? A. Not the slightest.

Q. Have you had no communication with him on that subject? A. Not a word, but I can add he will come here very quick if you ask me to telegraph to him.

Q. I do ask you to do so. A. I will, and unless he is detained on very important business from coming here, he will come, I promise.

Q. Do you know where Mr. Ensign, your former managing clerk, is? A. I believe he is in the Indian Ocean cruising in a vessel. The last I heard from him, he was.

Q. In it, or on it? A. I suppose the ship is in the ocean, and he is in the ship, so that is two "ins" for you.

By Mr. ANDREWS:

Q. In the case of The Albany & Susquehanna R. R. Co. *v.* James Ramsey and others, did you have authority to appear as attorney? A. Yes, sir.

Q. From whom was that authority derived? A. From the Executive Committee.

Q. Do you know of any communication having been made to Judge Barnard, that your firm had no authority to appear? A. No, sir; of course not. It would have been false.

Q. Did you ever have any conversation with Judge Barnard in reference to the granting of this injunction, until the application was made for it at the time it was signed? A. Which injunction?

Q. This order of arrest in the case of Ramsey *v.* The Albany & Susquehanna R. C. Co.? A. I never had no conversation with him on that subject at all. I have testified I understood Mr. Morgan got it; I didn't.

Q. Did you ever hear, or know of any agreement or understanding with Judge Barnard, in reference to the granting of that order of arrest? A. No, sir.

Adjourned to Friday, March 8th, 1872, at ten o'clock.

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